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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON,
PERSONALLY AND AS MEMBERS OF THE
SOUTH CAROLINA TAX COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

FILED DECEMBER 15, 1930

(35,518)

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IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

In Equity

GRANITEVILLE MANUFACTURING COMPANY, Plaintiff and Petitioner,

vs.

W. G. QUERY, J. P. DERHAM, and F. C. ROBINSON, as Members of South Carolina Tax Commission, Defendants and Respondents

AMENDED BILL OF COMPLAINT—Filed July 17, 1930

To the Honorable the District Judge of the Eastern District of South Carolina:

The plaintiff or petitioner complaining of the defendants or respondents, respectfully shows unto the Court:

1

That Graniteville Manufacturing Company (hereinafter referred to as the plaintiff) is a corporation duly chartered under the laws of the State of South Carolina, having its principal place of business in the Town or Settlement of Graniteville in Aiken, South Carolina.

2

That this is a suit of a civil nature in equity in which the matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars, and which arises under the Constitution of the United States, the jurisdic- [fol. 3] diction of the Court being invoked under the provisions of Section 24 of the Judicial Code of the United States.

3

That the defendants, W. G. Query, J. P. Derham, and Frank C. Robinson are citizens, residents, and inhabitants

of the State of South Carolina, and that they are the duly and legally appointed, qualified, and acting members of South Carolina Tax Commission; and as such members of said commission or board, which is an administrative board or commission, so constituted by the statute laws of the State of South Carolina, they are charged with the collection of certain taxes for the State of South Carolina, including particularly those taxes sought to be imposed by the Acts hereinafter specifically referred to, and in the matters hereinafter referred to they are proceeding to the enforcement and execution of such tax statutes. That they have their offices and transact their business in Columbia in the Eastern District of South Carolina.

That said defendants employ various agents, inspectors, attorneys, and field agents, who visit the various counties in the State to make inspections; that one of said field agents is E. H. Bowers, who has visited the offices of the plaintiff herein at Graniteville in Aiken County, South Carolina, and has done and performed certain acts hereinafter referred to, as the agent for defendants, and for said defendants in the assessment of a tax hereinafter set out. That Aiken County is situate in the Eastern District of South Carolina, and that this cause of action arose therein.

4

That for a number of years last passed, and specifically [fol. 4] including a period running from July 24, 1923, to March 12, 1930, in financing the operations of the plaintiff, it has been the custom of said plaintiff to borrow various large sums of money from banks, some of which are situate within the State of South Carolina, and some of which are situate without the State of South Carolina. That while its executive officers were Messrs. Jacob Phinizy and Coles Phinizy, both of whom resided in Augusta, Georgia, its notes were generally executed in Augusta, Georgia, and were there delivered to the banks in question or were mailed from Augusta, Georgia, to said banks where situated. That the whole of such transactions were carried on outside of this State. That this was the course of action prior to December 1, 1924.

That since said date the course of action has been that in each instance a paper of the form hereinafter set out

was executed by the President or some Executive Officer of the Graniteville Manufacturing Company at Graniteville, South Carolina. That said paper made in favor of banks existing at and located at points beyond the limits of the State of South Carolina, during the period referred to, were made to Chemical National Bank, State Bank of New York, E. Naunberg, Chase National Bank, and Bank of Manhattan Trust Company, all of New York City; to Citizens & Southern Bank, Georgia Railroad Bank, and National Exchange Bank of Augusta, Georgia, all of Augusta, Georgia; and to State Street Trust Company of Boston, Massachusetts, none of which banks are located or do business in South Carolina.

That the further custom and practice, and course of dealing between this plaintiff and each of said banks was that, [fol. 5] in each instance, at the office of the Bank, a line of credit was first established between the banks and the plaintiff—that is to say, an agreement was made that the plaintiff's borrowing from said banks should never exceed a certain amount, each specific loan to be made thereafter being subject to acceptance by the specific bank from whom it was sought. That thereafter, when a loan was desired, said bank having been notified that a loan would be desired by a certain date, and an inquiry having been made of it as to the then existing discount rate, that a paper of the purport hereinafter set out would be signed by the President, or other Executive Officer of the plaintiff, at the offices of the plaintiff in Graniteville, Aiken County, South Carolina, and said paper would be forwarded to the bank in question, either in New York or in Augusta, Georgia, or in Boston, Massachusetts, by United States mail. That said paper was subject to withdrawal and revocation by the plaintiff until it was actually received by the bank in question in the City of New York, or in the City of Augusta, Georgia, or in the City of Boston, Massachusetts, and until said paper was after its receipt in New York or Augusta, or in Boston, was accepted by said bank, and until the proceeds thereof were actually placed to the credit of this plaintiff. That in each instance said paper became effective as a note only upon its final acceptance in New York City, in the City of Boston, or in the City of Augusta, Georgia, after its receipt at said point by said bank and its acceptance by said bank, at which time, and only at which time,

the proceeds of said paper were placed to the credit of the [fol. 6] plaintiff in the bank in question, either in New York City, in the City of Boston, or in the City of Augusta, Georgia, at which time alone said transaction was completed and, as this plaintiff alleges, said paper signed in Graniteville, South Carolina, then aud then alone in reality became a note or commercial paper.

5

That each of said notes was executed upon a printed form, which form reads as follows:

"Graniteville Manufacturing Company,

Graniteville, South Carolina

No. — —— —, 192-.

"On —— —, ——, for value received, we promise to pay $— thousand dollars, to the order of —— ——, at their banking house in ——.

"Graniteville Manufacturing Company."

That in each instance the date and the amount involved and the name of the bank was filled in, and in each instance the blank provided for the place where the note was to be paid was filled in to read either in New York, N. Y., or in Boston, Massachusetts, or in Augusta, Georgia; and in each instance the note in question was in reality paid to the bank in question upon its maturity either in the City of New York, in Boston, Massachusetts, or in the City of Augusta, Georgia.

6

When each of said notes was paid, that in each instance it was marked paid or cancelled, and in many instances was actually perforated to show its payment, retirement, and cancellation, and was returned to the plaintiff at its office [fol. 7] in Graniteville, South Carolina.

7

That throughout the years this plaintiff, acting as it believed within its legal rights and in absolute good faith and not with any purpose of evading any just tax, has not

placed any South Carolina documentary stamps upon the notes which were negotiated with and placed with the banks situated in New York, N. Y., Boston, Massachusetts, and in the City of Augusta, Georgia. This plaintiff has from time to time borrowed funds and placed notes with banks located within the States of South Carolina, and has always fully stamped said notes with the South Carolina documentary stamps as required by law.

8

That the State of South Carolina has from time to time passed various acts, requiring the affixing of documentary stamps as a tax measure, upon various documents. These Acts are as follows, and reference is made to the specific terms of each of said Acts, to-wit:

Act No. 11, page 12, Acts of 1923,
Act No. 197, page 299, Acts of 1925,
Act No. 445, page 897, Acts of 1926,
Act No. 73, page 122, Acts of 1927; and
Act No. 574, page 1089, Acts of 1928.

That each of said Acts purports to place a documentary stamp on notes, bonds, debentures, or certificates of stock, or indebtedness for and in respect of the vellum parchment or paper upon which said instrument made, or thing, or [fol. 8] any of them, are written or printed, as appears by reference to the specific Acts in question.

9

That on or about the 14th day of May, 1930, the defendants through their field agent, E. H. Bowers, visited the plaintiff at its office in Graniteville in Aiken County, in the Eastern District, and on being accorded, at his request, full opportunity to examine the files and the cancelled notes of this plaintiff in its office, for and as the act of the defendants and as their order claimed to be under and pursuant to the aforesaid Statutes, assessed a tax against this plaintiff of five thousand, twenty, and 46/100 dollars ($5,020.46), arising out of the fact that beginning with the 24th day of July, 1923, which was the date of the first paper executed by this plaintiff in favor of a Bank situate beyond the limits of the State of South Carolina, after the Act of 1923 became effective, down to the date of his said

inspection, this plaintiff had refrained from placing documentary stamps upon notes given to, sent to, and negotiated with its bankers residing and doing business beyond the limits of the State of South Carolina, and upon the ground that had said documentary stamps of the State of South Carolina been placed upon said notes that the plaintiff would have paid the sum of five thousand twenty and 46/100 dollars for the said stamps, which sum would have gone to the State of South Carolina as a tax or taxes. That the course of action of the defendants in connection with documentary stamps now is, and throughout the period in question has been, to place the same with various agents usually connected with banks, which banks directly pay the [fol. 9] State the amount of said stamps when said stamps are ordered, and said stamps are then sold to the public by said banker or agent for cash. That at the present time the only agent in the County of Aiken is the Farmers and Merchants Bank of Aiken, who refused to sell said stamps save unconditionally and for cash; and no legal method exists to buy said stamps directly from the defendants except unconditionally and for cash.

That when said tax, for the reasons and for the purposes herein stated, was assessed, a schedule thereof was left with said plaintiff showing the dates of the various notes in question, the Bank to whom said note was made, the amounts thereof, and the alleged tax which the defendants claimed should have been paid in each instance by the affixing of documentary stamps to each of said notes. That a copy of said schedule is hereto attached as Exhibit "A" of this complaint. That said schedule shows that the amount claimed by the State in stamps which should have been attached to said notes, amounts to the sum of five thousand twenty and 46/100 dollars; and thereupon the defendants claiming to do the same, pursuant to the aforesaid Statutes of South Carolina, directed and ordered the plaintiff to pay said accrued taxes in said amount by purchasing from an agent of the Tax Commission stamps amounting to said sum of five thousand twenty and 46/100 dollars, and to affix the same to the aforesaid cancelled notes; and to cancel said stamps; and said defendants are now threatening to proceed against this plaintiff if it does not comply with said demand and direction, even to the extent of prosecuting its officers criminally, and to the ex-

tent of levying an execution against its realty and personality.

[fol. 10] 10

That this plaintiff alleges that,

(a) The series of notes in question, and none of them are, or were at any time, notes, bonds, debentures, certificates or stock or indebtedness, promissory notes, non-negotiable notes, or written obligations to pay money—within the State of South Carolina, nor

(b) Did they, or did they have a taxable situs within the State of South Carolina; and this plaintiff alleges for both of said reasons that the Tax Commission is not warranted by a proper construction of the Statutes involved to levy, assess, and attempt to collect a documentary stamp tax or the amount thereof, or to require the placing of stamps on said notes; and that, further, leaving statutory construction aside, that inasmuch as said notes are non-existent as notes, bonds, debentures, or such-like, within the State of South Carolina, and had no taxable situs within said State, that the defendants in the State of South Carolina have not the power to tax or to attempt to tax the aforesaid series of notes or any of them; and this plaintiff alleges that so to do constitutes the taking of property without due process of law, and constitutes a violation of the Fourteenth Amendment of the Federal Constitution, and renders the Statutes hereinbefore referred to under which the defendants are acting, and any other Statutes under which the defendants may be acting or attempting to act, repugnant to said Fourteenth Amendment of the Constitution of the United States of America.

11

This plaintiff further alleges that inasmuch as the papers [fol. 11] upon which said series of notes were written were mailed from the State of South Carolina to the State of New York, or to the State of Georgia, that to attempt to tax the same and to construe the Statutes in question as taxing the same, would be and would constitute a violation of the Commerce Clause of the Constitution of the United States and render said Statutes so proceeded under and herein set out to be repugnant to the Commerce Clause of

said Federal Constitution; and this plaintiff further alleges that to attempt to construe and enforce the Statutes in question as assessing an occupation tax renders the same repugnant to Section 1 of Article X of the Constitution of the State of South Carolina, which provides only for a graduated license on occupations and business, and that to construe and enforce said documentary tax as a property tax renders the same repugnant to the same Article of the same Constitution, for the reason, as to this first objection, that said tax is not a tax upon an occupation or business carried on within the State of South Carolina; and for the further reason as to the second objection, that said tax as a property tax is not uniform, the same being two to four cents per hundred dollars on notes, whereas a much lesser sum is charged and assessed in Aiken County, South Carolina, upon realty and personalty.

12

This plaintiff alleges that it is always entirely willing and desirous of paying its just and proper taxes, and that it pays a large amount of taxes to the State of South Carolina, and that it has always stamped its notes to South Carolina banks, and that this action is not brought for the [fol. 12] purpose of evading a proper tax, but this plaintiff alleges that for all of the reasons herein set up that it does not owe the State of South Carolina any documentary taxes, nor the duty to purchase documentary stamps and to affix the same on the pieces of paper which were examined by the field agent of the South Carolina Tax Commission and which now constitute concelled and worthless notes; and that said duty exists neither under the proper Statutory construction nor, laying Statutory construction aside, under the law of the land, said papers never having existed as notes or evidences of indebtedness within the State of South Carolina and never having had a taxable situs within said State.

This plaintiff further alleges that the defendants not only threaten to proceed to the collection of the aforesaid sum of five thousand twenty and 46/100 dollars which has been assessed as due it, by ordering the plaintiff to purchase documentary stamps and to place the same on the pieces of paper above referred to, but the defendants threaten to and express an intention as to all future dealings of the

plaintiff with its bankers beyond the State of South Carolina, to require the affixing of documentary stamps upon any papers delivered by this plaintiff to any bankers beyond the State of South Carolina, which may in the end become promissory notes. That this plaintiff is under the necessity from time to time to borrow money in the future from its bankers beyond the State of South Carolina, and that the question involved as to whether it must buy said documentary stamps and affix them upon the said papers will quite frequently from time to time arise in the future.

[fol. 13] 13

This plaintiff alleges that it is entitled to have the defendants, their agents, attorneys, and representatives enjoined from taking any steps whatsoever, looking to the collection of the sum of five thousand twenty and 46/100 dollars, which has been assessed against it as is hereinbefore set out, and from requiring and forcing this plaintiff to buy documentary stamps from the agent of the State of South Carolina for said amount, and to affix the same to the series of pieces of paper or cancelled notes hereinbefore referred to, and from proscuting and arresting its officers, and from issuing executions against its property, and from in the future attempting a like proceeding, for the reason that this plaintiff has no plain, adequate, or complete remedy at law nor in fact any remedy whatsoever against the wrong or wrongs which are threatened against it by the defendant, for the following reasons:

(a) That there is no plain, certain, and unequivocal method provided by the law by which said tax may be paid under protest and its amount recovered in case the Courts find that said amount was not due for said tax.

(b) That the plaintiff has been ordered to buy documentary stamps and to affix the same to the said pieces of paper referred to herein, and to cancel the same, and that when said stamps are cancelled their value is destroyed and there is no legal method to enforce from any person or officer or commission the restitution of their purchase price.

[fol. 14] (c) That the tax in question is by the Acts in question, made a lien upon the personalty and realty of

the plaintiff, and inasmuch as this plaintiff owns much valuable personalty and realty the said tax becomes a cloud thereupon.

(d) That under the terms of said Acts, failure to pay said alleged tax and failure to affix said documentary stamps is made a criminal offiense, for each of which failures the person signing said pieces of paper or alleged notes becomes liable to a separate criminal prosecution, which fact renders the officers of this corporation liable for as many as 114 criminal prosecutions in connection with the matters herein set up. That this plaintiff's business would be upset, interrupted, and disrupted by such proceedings, in that it would not be able to conduct its business and to retain the services of employees or officers in the face of such criminal prosecutions which said criminal prosecutions are threatened, if the orders of the defendants herein are not immediately complied with, nor to induce its officers in the future to execute similar papers in the face of liability to prosecution and arrest.

(e) That this plaintiff would be subjected to numerous and multifarious executions and suits at law for the collection of taxes, both past and prospective, the collection of which it alleges and avers is illegal, improper, and unconstitutional.

[fol. 15] 14

That this plaintiff further and specifically alleges that on Monday, the 16th day of June, 1930, the defendants, W. G. Query, J. P. Derham, and F. C. Robinson finally and specifically notified and informed this plaintiff that if it did not immediately purchase documentary stamp taxes of the State of South Carolina in the sum of five thousand twenty and 46/100 dollars, and place the same on said cancelled notes and cancel said stamps, that the said defendants would immediately issue execution in the aforesaid sum and place the same in the hands of the Sheriff of Aiken County and have the property, both real and personal, of the plaintiff, seized and sold for the purpose of the payment of said tax under said execution. That to so proceed would place a cloud upon the valuable realty and personalty of this plaintiff consisting of its cotton mills and plants, realty, machinery, and cotton, and cotton goods on hand in Aiken

County, and would interrupt and disrupt its business, and would subject it to immediate and irreparable injury, loss and damage, which would forthwith accrue to it and against it before notice could be given to the defendant and any hearing could be heard. That the said defendants further notified this plaintiff on said June 16, 1930, that they would be unwilling to delay the issuance of said execution until the matter could be heard and determined by a Court of Three Judges, as is provided by Section 266 of the Federal Judicial Code, but that if an injunction was not obtained forthwith and immediately that said execution would be issued and said proceeding above set out would be had immediately, and this plaintiff alleges that it would be entirely impracticable and impossible upon notice to the op-
[fol. 16] posite parties to have a hearing in time to prevent said threatened injury.

Wherefore, in consideration of the premises, and inasmuch as the plaintiff is without remedy at law, and inasmuch as its only protection must arise from the equity jurisdiction of this Court, plaintiff prays:

(1) That a writ of subpœna and respondendum issue out of and under the seal of this Court, and be directed to the defendants, W. G. Query, J. P. Derham, and F. C. Robinson, as members of South Carolina Tax Commission, and to them, requiring them to appear and to answer this bill, but not under oath, their answers under oath being expressly waived.

(2) That the Court construe the Acts herein set up, and that it be adjudicated.

(a) That the said Acts do not purport to place a documentary stamp tax upon the notes set out in this complaint or bill, and,

(b) In the alternative, if it be held that it does so apply, that it be adjudged that the aforesaid Acts in their application to and in the effort under them to place a documentary stamp tax upon the aforesaid notes, and in the effort to require said notes to be stamped, be declared to be void and unconstitutional and violative of plaintiff's rights and repugnant to the Fourteenth Amendment of the Constitution of the United States and to the Commerce Clause

thereof, and repugnant to the Constitution of the State of South Carolina, in the respects set up in this complaint, and,

[fol. 17] (c) That it be held that the laws in connection with said proposed documentary tax do not provide any plain, adequate, and complete remedy at law.

(3) That a temporary restraining order be granted enjoining the defendants from proceeding to enforce the collection of the proposed tax which has been assessed, either by warrant and arrest against this plaintiff or its officers, or by the issuance of execution against its property, or by any other legal means, and from the assessment of further taxes to be assessed against notes to be executed by this plaintiff in the future in favor of bankers residing, situated, and doing business beyond the limits of the State of South Carolina; that a Court constituted as is required by Section 266 of the Judicial Code of the United States be conveyed, and that said Court issue an interlocutory injunction so enjoining said defendants; and that on final hearing said Court make said injunction perpetual, forever enjoining the collection of the tax already assessed or any part thereof, and forever enjoining any attempt whatsoever on the part of the defendants to collect a similar tax arising out and acting under the existing Acts of the South Carolina Legislature. Let said restraining order and said injunctions run not only against the defendants, but also against their attorneys, assistants, subordinates, agents, and servants.

(4) That the plaintiff have and recover of the defendants the costs of this suit.

[fol. 18] (5) That the plaintiff have such further, other, and general relief as may be equitable.

This is the first application for an injunction in this cause.

Graniteville Manufacturing Company, By S. H. Swint, Treasurer. P. F. Henderson, Hendersons & Salley, Attorneys and Solicitors for Plaintiff.

[fol. 19] *Duly sworn to by S. H. Swint. Jurat omitted in printing.*

[fol. 20] AFFIDAVIT OF LANIER BRANSON

STATE OF SOUTH CAROLINA,
County of Aiken:

Personally appeared Lanier Branson, who, being duly sworn, says:

That he is the President of the Graniteville Manufacturing Company, having assumed the duties of that position about the 1st of December, 1924. He then succeeded Mr. Coles Phinizy in the active charge of the matters of the Graniteville Manufacturing Company, Mr. Coles Phinizy having after the death of his uncle, Mr. Jacob Phinizy, been active Vice-President of the Graniteville Manufacturing Company.

That the general course of dealing in connection with notes and the borrowing of monies from the various banks outside of the State of South Carolina since this deponent has been the President of the Graniteville Manufacturing Company, is correctly set out in the complaint.

Lanier Branson.

Sworn to before me this 17th day of June, 1930.
Belle Durden, Notary Public for South Carolina.
(L. S.)

[fol. 21] AFFIDAVIT OF P. F. HENDERSON

STATE OF SOUTH CAROLINA,
County of Aiken:

Personally appeared before me P. F. Henderson, who, being duly sworn, says:

That on Monday, the 16th day of June, 1930, he visited General J. Fraser Lyon, the Attorney of the South Carolina Tax Commission, and its members, who has its legal matters generally in charge, and who specifically is in charge of the matters set out in the bill of complaint herein, and discussed at length the question of the liability of the Graniteville Manufacturing Company for the documentary stamp tax in question. That as a result of said conference General Lyon courteously but firmly informed this deponent as the representative of Graniteville Manufacturing Company, that it was the purpose and intent of the Tax

Commission and its members immediately and forthwith to proceed to the collection of the tax claimed by the Tax Commission by such effective ueans as might be necessary, specifically mentioning the intention forthwith and immediately to issue execution to place the same in the hands of the Sheriff of Aiken County and proceed to the seizure of the property of the Graniteville Manufacturing Company and its sale for the collection of said tax. General Lyon stated that the Tax Commission would not be willing to waive the obtaining of a temporary injunction in the Federal Court pending the assembling of the Statutory Court before three Judges provided by section 266 of the Judicial Code; but stated that said temporary injunction must be procured and the Tax Commission and its members must be enjoined if it was intended to prevent their proceeding against the Graniteville Manufacturing Company immediately. He further reiterated the fact that the order of the [fol. 22] Tax Commission was that documentary stamps must be procured or fixed to the old notes and physically cancelled.

P. F. Henderson.

Sworn to before me this 17th day of June, 1930.
Belle Durden, Notary Public for South Carolina.
(L. S.)

[fol. 23] AFFIDAVIT OF COLES PHINIZY

STATE OF GEORGIA,
County of Richmond:

Personally appeared Coles Phini-y, who, being duly sworn says, that he was Vice-President and Treasurer of Graniteville Manufacturing Company until about November 1, 1924. That his Uncle, Mr. Jacob Phinizy, was President until his death on May 30th, 1924.

That deponent has examined the various notes listed by the South Carolina Tax Commission herein while he and Mr. Jacob Phinizy were officers of the Company; that during said period Mr. Jacob Phinizy was President of the Georgia Railroad Bank and transacted his business for the Graniteville Mfg. Co. in Augusta, Georgia, and not in Graniteville, S. C., having his desk in the Georgia Railroad Bank. That the following notes are dated and were exe-

cuted by Mr. Jacob Phinizy in Augusta, and were there delivered to the Banks on which they were drawn or were mailed from Augusta, Ga.:

Noted Produced, Dated at Augusta, Ga., Signed by Jacob Phinizy, President

April	25th, 1924.	Chemical National Bank	$140,000.00
Feb.	7th, 1924.	Citizens & Southern Bank	50,000.00
Feb.	7th, 1924.	Citizens & Southern Bank	50,000.00
Feb.	27th, 1924.	Citizens & Southern Bank	100,000.00
Nov.	14th, 1923.	Georgia Railroad Bank	50,000.00
Feb.	14th, 1924.	Georgia Railroad Bank	45,000.00
Sept.	21st, 1923.	National Exchange Bank	50,000.00

The following notes are dated and were executed by this deponent in Augusta, those to Georgia Railroad Bank being delivered to it in Augusta and those to Chemical National Bank being mailed from Augusta. That deponent lived in Augusta and did much of his work there:

[fol. 24] Notes Produced, Dated at and Executed in Augusta, Georgia, Signed by Coles Phinizy, Vice-President and Treasurer

Sept.	13th,1923.	Chemical National Bank	$225,000.00
Oct.	31st, 1923.	Georgia Railroad Bank	50,000.00
Nov.	13th, 1923.	Georgia Railroad Bank	196,154.98
May	14th, 1924.	Chemical National Bank	190,000.00

That notes—

Dated Oct. 7th, 1924, for $50,000.00 in favor of Citizens & Southern Bank, signed Graniteville Mfg. Co., by Coles Phinizy;

Dated Aug. 7th, 1924, for $70,000.00 in favor of Citizens & Southern Bank, signed Graniteville Mfg. Co. by Coles Phinizy;

Dated Sept. 12th, 1924, for $50,000.00 in favor of National Exchange Bank, signed Graniteville Mfg. Co., by Coles Phinizy,

are renewals, signed by deponent of former notes, and while they were signed and mailed from Graniteville, S. C., they did not become effective until the Banks in Augusta cancelled the old notes and accepted the renewals in lieu thereof.

As to the list of notes misplaced, deponent would say that the following were executed in the name of either Mr. Jacob Phinizy or himself, and that the practice followed was that all such notes were executed in Augusta and were delivered to the Augusta Banks or mailed from Augusta to the Banks out of the State. This was the course practically invariably followed by deponent and Mr. Jacob Phinizy, both of whom lived in Augusta, Ga. These notes are:

[fol. 25] List of Notes Not in File, Having Been Misplaced

July 24th, 1923.	Chemical National Bank	$175,000.00
Nov. 26th, 1923.	Chemical National Bank	175,000.00
June 7th, 1924.	Citizens & Southern Bank	50,000.00
June 9th, 1923.	Georgia Railroad Bank	55,000.00
Sept. 12th, 1923.	Georgia Railroad Bank	75,000.00
Sept. 22nd, 1923.	Georgia Railroad Bank	50,000.00
Nov. 19th, 1923.	Georgia Railroad Bank	20,000.00
Dec. 12th, 1923.	Georgia Railroad Bank	50,000.00
Aug. 18th, 1924.	State St. Trust Co.	200,000.00

Coles Phinizy.

Sworn to before me this 17 day of June, 1930. A. D. Tobin, Notary Public for Georgia. (L. S.)

[fol. 26] "Exhibit A" to Amended Bill of Complaint

Graniteville Manufacturing Co., Graniteville, S. C.

5-13-30.

List of Unstamped Notes

Notes Not in File, Having Been Misplaced

					Tax
July	24, 23.	Chemical Natl. Bank...	175,000.00	.....	.....
Nov.	26, 23.	" " " ...	175,000.00	.....	.....
June	7, 24.	Citizens Southern	50,000.00	.....	.....
June	9, 23.	Ga. R. R. Bank.....	50,000.00	.....	.....
Sept.	12, 23.	" " " "	75,000.00	.....	.....
Sept.	22, 23.	" " " "	50,000.00	.....	.....
Nov.	19, 23.	" " " "	20,000.00	.....	.....
Dec.	12, 23.	" " " "	50,000.00	.....	.....
Mar.	10, 25.	Natl. Exc. Bk. of Aug...	50,000.00	.....	.....
Aug.	18, 24.	State St. Trust Co.....	200,000.00	.....	.....
				895,000.00	179.00
Feb.	20, 26.	Citizens Southern.....	150,000.00	.....	.....
				150,000.00	60.00
June	8, 26.	" "	50,000.00	.....	.....
				50,000.00	10.00
					249.00

Notes in Evidence Not Stamped

Sept. 14, 23.	Chemic. 1 Natl. Bk....	225,000.00	.....	.....
April 25, 24.		140,000.00	.....	.....
May 14, 24.		190,000.00	.....	.....
Jan. 5, 25.		200,000.00	.....	.....
Feb. 7, 24.	Citizens Southern	50,000.00	.....	.....
Feb. 7, 24.		50,000.00	.....	.....
Feb. 27, 24.		100,000.00	.....	.....
Aug. 7, 24.		70,000.00	.....	.....
Oct. 7, 24.		50,000.00	.....	.....
Dec. 8, 24.		70,000.00	.....	.....
Feb. 3, 25.	State St. Trust	200,000.00	.....	.....
Nov. 10, 24.	State Bk. of N. Y.....	200,000.00	.....	.....
Oct. 31, 23.	Ga. R. R. Bank.....	50,000.00	.....	.....
Nov. 14, 23.		50,000.00	.....	.....
Feb. 14, 24.		45,000.00	.....	.....
Mar. 11, 25.		100,000.00	.....	.....
Sept. 21, 23.	Natl Exe. Bk of Aug...	50,000.00	.....	.....
Sept. 12, 24.		50,000.00	.....	.....
			1,890,000.00	378.00
June 23, 25.	Chemical Natl. Bk.....	200,000.00	.....	.....
Oct. 20, 25.		200,000.00	.....	.....
Dec. 12, 25.		200,000.00	.....	.....
July 6, 25.	Citizens Southern	100,000.00	.....	.....
Dec. 12, 25.		100,000.00	.....	.....
July 28, 25.	State St. Trust.....	100,000.00	.....	.....
Aug. 4, 25.		100,000.00	.....	.....
Jan. 19, 26.		200,000.00	.....	.....
May 18, 25.	State Bank of N. Y....	200,000.00	.....	.....
Oct. 6, 25.		50,000.00	.....	.....
Nov. 7, 25.		200,000.00	.....	.....
Sept. 2, 25.	Ga. R. R. Bank.....	100,000.00	.....	.....
Feb. 20, 26.		100,000.00	.....	.....
Sept. 3, 25.	Natl Exc. Bank of Aug...	50,000.00	.....	.....
Feb. 20, 26.		50,000.00	.....	.....
Nov. 13, 23.	X Ga. R. R. Bank.....	196,154.98	.....	.....
			2,146,154.98	858.48
June 7, 26.	Chemical Natl.	200,000.00	.....	.....
Nov. 30, 26.		200,000.00	.....	.....
Aug. 14, 26.	Citizens Southern	75,000.00	.....	.....
Mar. 12, 27.		100,000.00	.....	.....
Apr. 7, 27.		100,000.00	.....	.....
July 13, 26.	State St. Trust Co.	200,000.00	.....	.....
Feb. 8, 27.		150,000.00	.....	.....
May 4, 26.	State Bank of N. Y....	200,000.00	.....	.....
Oct. 26, 26.		200,000.00	.....	.....
May 26, 26.	Ga. R. R. Bank.....	75,000.00	.....	.....
Aug. 14, 26.		75,000.00	.....	.....
Feb. 8, 27.		50,000.00	.....	.....
Apr. 7, 27.		50,000.00	.....	.....
Feb. 8, 27.	Natl Exc. Bank of Aug...	50,000.00	.....	.....
Aug. 14, 26.	X Ga. R. R. Bank.....	75,000.00	.....	.....
			1,800,000.00	360.00
				1,845.48

Continued

[fol. 27]

Total amt ford			.....	6,931,154.98	1,845.48
July	5, 27.	State St. Trust Co.....	100,000.00	.....	.....
July	25, 27.		100,000.00	.....	.....
Jan.	23, 28.		200,000.00	.....	.....
July	17, 28.		200,000.00	.....	.....
Dec.	28, 28.		200,000.00	.....	.....
Sept.	28, 29.		150,000.00	.....	.....
May	23, 27.	State Bank of N. Y.....	200,000.00	.....	.....
July	19, 27.		50,000.00	.....	.....
Oct.	12, 27.		250,000.00	.....	.....
Apr.	2, 28.		150,000.00	.....	.....
Sept.	27, 28.		250,000.00	.....	.....
Mar.	13, 29.		250,000.00	.....	.....
Sept.	17, 29.		250,000.00	.....	.....
Dec.	17, 29.		250,000.00	.....	.....
Nov.	14, 27.	E. Naunberg	50,000.00	.....	.....
Jan.	3, 28.		50,000.00	.....	.....
Apr.	2, 28.		50,000.00	.....	.....
Feb.	27, 28.	Chase Natl Bank.....	250,000.00	.....	.....
Aug.	20, 28.		250,000.00	.....	.....
Feb.	17, 29.		250,000.00	.....	.....
Aug.	12, 29.		250,000.00	.....	.....
Nov.	14, 27.	Ga. R. R. Bank.....	100,000.00	.....	.....
Feb.	14, 28.		75,000.00	.....	.....
June	12, 28.		75,000.00	.....	.....
Nov.	19, 28.		100,000.00	.....	.....
Jan.	19, 29.		50,000.00	.....	.....
Mar.	30, 29.		100,000.00	.....	.....
May	23, 27.	Natl Exc. Bank of Aug...	50,000.00	.....	.....
Nov.	14, 27.		50,000.00	.....	.....
Apr.	2, 28.		50,000.00	.....	.....
Feb.	10, 30.		50,000.00	.....	.....
July	5, 27.	Chemical Natl Bank....	100,000.00	.....	.....
July	29, 27.		100,000.00	.....	.....
Jan.	3, 28.		200,000.00	.....	.....
May	7, 28.		250,000.00	.....	.....
Nov.	2, 28.		250,000.00	.....	.....
Apr.	29, 29.		250,000.00	.....	.....
Nov.	27, 29.		250,000.00	.....	.....
Sept.	3, 27.	Citizens Southern	100,000.00	.....	.....
Dec.	20, 27.		100,000.00	.....	.....
Feb.	14, 28.		75,000.00	.....	.....
June	12, 28.		75,000.00	.....	.....
Nov.	19, 28.		100,000.00	.....	.....
Mar.	18, 29.		100,000.00	.....	.....
June	3, 29.		150,000.00	.....	.....
June	29, 29.		50,000.00	.....	.....
July	1, 29.		100,000.00	.....	.....
Jan.	6, 30.		150,000.00	.....	.....
				6,850,000.00	2,740.00
				15,781,154.98	4,585.46

Amount of outstanding notes on which no stamps have been affixed.

Apr.	4, 30.	State Bank of N. Y.....	250,000.00	.....	.....
Feb.	10, 30.	Chase Natl Bank.....	250,000.00	.....	.....
Mar.	11, 30.	Geo. R. R. Bank.....	100,000.00	.....	.....
Apr.	12, 30.	Chemical Natl.	250,000.00	.....	.....
Mar.	12, 30.	Bk. of Manhattan Trust Co.	250,000.00	.....	.....
			1,100,000.00	1,100,000.00	440.00
					5,020.46

[fol. 28] IN UNITED STATES DISTRICT COURT

STATEMENT RE SUBPŒNA AND SERVICE

The foregoing complaint was accompanied by a proper subpœna, and due personal service of copies thereof were accepted by the defendants on the 20th day of June, 1930.

[fol. 29] IN UNITED STATES DISTRICT COURT

AMENDED ANSWER AND RETURN—Filed July 30, 1930

To the Honorable the District Court of the Eastern District of South Carolina:

The answer of the defendants and respondents to the Bill of Complaint and Return to the order of the Court, dated June 27, 1930, fixing July 17, 1930, for return and hearing upon the application for an interlocutory injunction.

Now comes the defendants and respondents, and say for answer *to* the Bill of Complaint and for cause why an interlocutory injunction should not issue:

1

The plaintiff and defendant having entered into an agreement and stipulation as to the facts in this case which are to supersede any facts stated in the complaint, no answer to the statement of facts contained in said complaint will be made; but that said agreed statement of facts is adopted as part of this answer.

[fol. 30] 2

Defendants deny the allegations contained in paragraph 10 (a); these defendants allege that the said Acts of the General Assembly of the State of South Carolina referred to in the Bill of Complaint, all provide as follows:

"That on or after the passage of this Act, there shall be levied, collected and paid, for and in respect of the several bonds, debentures, or certificates of stock and indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule *A* of this Act, or for or in respect of the vellum, parchment, or paper upon which such instrument, matter or things, or any of them are written or printed, by any person who makes, signs, issues, sells, removes, consigns or ships the same or for whose benefit or use the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule."

Schedule A, section 4 of said Act provides as follows:

"Notes, Written Obligations to Pay Money.—Promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed; non-negotiable notes; written obligations to pay money, except as may herein otherwise be provided for; assignment of salaries, wages or other compensations; and for each renewal of same, for a sum not exceeding One Hundred ($100.00) Dollars, four (4) cents; and for each additional One Hundred ($100.00) Dollars, or fractional part thereof, four (4) cents.

"Mortgages which incorporate the certificate of indebtedness not otherwise shown in separate instruments are subject to a tax at the same rate."

Under and by vitrue of the above enactments, defendants allege that the plaintiff is liable for the payment of an excise tax upon signing said notes and for and in respect of the vellum, parchment, or paper upon which such notes are written and printed;

3

Defendants deny paragraph 10 (b) and allege that the State of South Carolina has power to lay an excise tax upon the signing of any of the papers mentioned in said [fol. 31] Act No. 574, for and in respect to the vellum, parchment, or paper upon which such instrument is written or printed, or by any person who signs the same, no matter whether the vellum, parchment, or paper upon which such instrument is written be within the State of South Carolina or not so long as it is signed, either within or without the State by a corporation chartered under the laws of the State of South Carolina; that as to certain of the notes having been executed in the City of Augusta, State of Georgia, these defendants allege that in contemplation of law and legal effect they were signed in Graniteville, South Carolina, for that plaintiff was not authorized to do business, or carry on any of its activities under the laws of the State of Georgia, and such notes as were signed in the City of Augusta, Georgia, were for the personal convenience of the individual officers of said plaintiff who happened to have their residence in the City of Augusta, Georgia; defendants allege that the State of South Carolina has the right to lay a tax upon the signing of any of the notes and papers mentioned and described in the Bill of Complaint and that it has the right to levy a tax upon the vellum, parchment, or paper upon which the same is written and printed, regardless of whether such written instrument had at the instant signing of same the legal effect of a note, bond, or other obligation, to pay money.

4

Defendants deny each and every allegation contained in paragraph Eleven; defendants further say that the notes and papers described in the Bill of Complaint and stipulation are not the subjects of interstate commerce and that the Commerce Clause of the Constitution of the United States has no application thereto; defendants allege that neither the alleged notes nor the money borrowed thereon were ever the subjects of interstate commerce.

[fol. 32] As to the Section I, Article X of the Constitution of South Carolina, defendants say that said provision of the State Constitution in nowise limits or restricts the

Legislature from adopting the tax involved in this litigation; that the Legislature of South Carolina is empowered to levy any and all kind of taxes, except where specifically restricted and limited either by the Constitution of South Carolina or the Federal Constitution, and there is no provision in either of said Constitutions whereby the legislature is denied the power to levy the tax in question.

5

Defendants deny the allegations contained in paragraph Twelve, except as the same may be admitted in the Stipulation of Facts hereto attached.

6

Defendants deny the allegations contained in paragraph Thirteen, except as the same may be shown to the contrary in the written Stipulation of Facts hereto attached.

Further answering paragraph Thirteen, defendants allege that there is a plain, adequate, and complete remedy at law by which plaintiff may safely and fully protect any rights which he may have in the premises, in that it is provided by Section 29 of the Act involved in this litigation, as follows:

"That the collection of the license taxes imposed under the provisions of this Act shall not be stayed or prevented by any injunction, writ or order issued by any Court or Judge thereon. In all cases in which any license or tax is required to be paid hereunder by any person, firm or corporation and the Tax Commission shall claim the payment of the taxes so assessed, or shall take any step or proceedings to collect the same, the person, firm or corporation against whom such license taxes are charged, or against whom such [fol. 33] step or proceedings shall be taken, shall, if he conceives the same to be unjust or illegal for any reason, pay the said taxes notwithstanding, under protest, in such funds and monies as the South Carolina Tax Commission shall be authorized to receive, and upon such payment being made said South Carolina Tax Commission shall make proper note that the same was paid under protest and notify the State Treasurer that such taxes were paid under protest; that the person, firm or corporation so paying said license taxes may at any time within thirty days

after making such payment, but not afterwards, bring an action against the said South Carolina Tax Commission for the recovery thereof in any Court of competent jurisdiction and/or in proper cases in the Federal Courts and if it be determined in said action that such taxes were wrongfully and illegally collected for any reason owing to the merits, then the Court before which the case is tried shall certify of record that the same were wrongfully collected and ordered to be returned with interest thereon at the rate of four (4%) per centum per annum. Whereupon the Tax Commission shall issue its warrant upon the State Treasurer for refunding the taxes and interest so paid, which shall be paid in preference to other claims against the treasury."

Wherefore, having thus made a full answer to all the matters and things contained in the Bill of Complaint and having herein fully made return to the order to show cause why an interlocutory injunction should not be granted, defendants pray that an interlocutory injunction be denied and that the Bill of Complaint be dismissed, and for judgment for its costs in this behalf incurred.

John M. Daniel, Attorney General; Cordie Page, Assistant Atty. Gen.; J. Fraser Lyon, Solicitors for Defendants-Respondents.

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED AGREED STATEMENT OF FACTS—Filed July 9, 1930

It is stipulated and agreed between Graniteville Manufacturing Company, plaintiff and petitioner herein, acting by and through its counsel, and the defendants, W. G. Query, J. P. Derham, and F. C. Robinson personally and as members of the South Carolina Tax Commission, defendants and respondents herein, acting by and through their counsel, that the following facts are admitted and agreed to as being the facts underlying and surrounding this cause. The following are the agreed facts:

1. That Graniteville Manufacturing Company (hereinafter referred to as the plaintiff) is a corporation duly chartered under the laws of the State of South Carolina, having its principal place of business in the Town or Settlement of Graniteville, South Carolina.

II. That this is a suit of a civil nature in equity (defendants reserving, however, the point that the plaintiff has an adequate remedy at law), in which the matter in [fol. 35] controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars; that said suit arises under the Constitution of the United States, and that the Courts of the United States have jurisdiction under the provisions of Section 24 of the Judicial Code of the United States.

III. That South Carolina Tax Commission is an administrative board or commission, and is so constituted by the Statute Laws of the State of South Carolina. That said commission is at present composed of W. G. Query, J. P. Derham, and F. C. Robinson as Commissioners, who are the defendants herein personally and as members of said commission; and that said commission maintains its offices and transacts its business (except as is herein noted) at Columbia, South Carolina, at the seat of Government within the Eastern District of South Carolina.

That the said defendants employ various agents, inspectors, attorneys, and field agents to visit the various counties in the State to make inspections; and that one of said agents has recently visited the offices of the plaintiff at Graniteville, South Carolina, which is situated in Aiken County within the Eastern District of South Carolina, and has done and performed certain acts hereinafter referred to at said place as the agent of the defendant.

IV. That for a number of years last passed and specifically including a period running from July 24, 1923, to March 12, 1930, in financing the operations of the plaintiff it has been the custom of the said plaintiff to borrow various large sums of money from banks, some of which are situate within the State of South Carolina, and some of which are situate without the State of South Carolina. [fol. 36] That while its executive officers were Messrs. Jacob Phinizy and Coles Phinizy, both of whom resided in

Augusta, Georgia, all notes were executed in Augusta, Georgia, and were there delivered to the banks in question, or were mailed from Augusta, Georgia, to said banks where situated. That the details of said general course of action during said period are fully outlined and set out in the affidavit of Mr. Coles Phinizy, which is attached to the original complaint herein, which is to be taken as true and correct, and to which reference is had.

That this was the course of action prior to December 1, 1924, at which time the active management of the plaintiff was assumed by Mr. Lanier Branson, who, from said time to the present time, has been and now is the President of the plaintiff.

That since said date (December 1, 1924) the course of action of the plaintiff has been that in each instance a paper of the form hereinafter set out was executed by the president or by some executive officer of the plaintiff at Graniteville, South Carolina. That said papers made in favor of banks existing at and located at points beyond the limits of the State of South Carolina, during the period referred to, were made to Chemical National Bank, State National Bank of New York, E. Naunberg, Chase National Bank, and Bank of Manhattan Trust Company, of New York City; to Citizens & Southern Bank (now The Citizens & Southern National Bank), Georgia Railroad Bank, and National Exchange Bank of Augusta, Georgia, all of Augusta, Georgia; and to State Street Deposit Company of Boston, Massachusetts, none of which banks are located or do business within the State of South Carolina.

[fol. 37] That the further custom and practice in the course of dealing between this plaintiff and each of said banks was that, in each instance, at the office of the banks, a line of credit was first established between the banks and the plaintiff—that is to say, an agreement was made that the plaintiff's borrowing from said banks should never exceed a certain amount, each specific loan to be made thereafter being subject to acceptance by the specific bank from whom it was sought, That thereafter, when a loan was desired said bank having been notified that a loan would be desired by a certain date, and an inquiry having been made of it as to the then existing discount rate, that a paper of the purport hereinafter set out would be signed

by the President or other Executive Officer of the plaintiff at the offices of the plaintiff in Graniteville, Aiken County, South Carolina, and said paper would be forwarded to the bank in question, either in New York or in Augusta, or in Boston, by United States mail. That said paper was subject to withdrawal and revocation by the plaintiff until it was actually received by the bank in question in the City of New York or in the City of Augusta, Georgia, or in the City of Boston, Massachusetts, and until said paper was, after its receipt in New York or Augusta or in Boston, accepted by said bank, and the proceeds thereof were actually placed to the credit of this plaintiff in said bank.

V. That each of said notes were executed on a blank form, which form reads as follows:

"Graniteville Manufacturing Company, Graniteville, South Carolina

"No. —. —— —, 192-.

"On —— —, ——, for value received, we promise to pay [fol. 38] $— thousand dollars, to the order of —— ——, at their banking house in —— ——.

"Graniteville Manufacturing Company."

That in each instance the date and amount involved and the name of the bank was filled in, and in each instance the blank provided for the place where the note was to be paid was filled in to read either in New York or in Boston, Massachusetts, or in Augusta, Georgia, as the case might be; and in each instance the note in question was actually paid to the bank in question upon its maturity either in the City of New York or in Boston, Massachusetts, or in the City of Augusta, Georgia. That said payments were made by sending to the bank in question checks upon other banks, which other banks were generally in New York, Boston, or Augusta; that said checks were generally sent from the office of the plaintiff in Graniteville, South Carolina.

VI. When each of said notes was paid, that in each instance it was marked paid or cancelled, and in many instances was actually perforated to show its payment, retirement, and cancellation, and was returned to the plaintiff at its offce in Graniteville, South Carolina.

VII. That throughout the years this plaintiff, acting as it believed within its legal rights and with absolute good faith and not with any purpose of evading any just tax, has not placed any South Carolina Documentary Stamps upon notes that were negotiated with and placed with the banks situated in New York, Boston, or Augusta. This plaintiff has from time to time borrowed funds and placed loans with banks located within the State of South Carolina, and has always fully stamped said notes with the [fol. 39] South Carolina Documentary stamps as required by law.

VIII. That the State of South Carolina has from time to time passed various acts requiring the affixing of documentary stamps as a tax measure, upon various documents. These Acts are as follows, and reference is made to the specific terms of each of said Acts, to-wit:

Act No. 11, page 12, Acts of 1923,
Act No. 197, page 299, Acts of 1925,
Act No. 475, page 897, Acts of 1926,
Act No. 73, page 122, Acts of 1927, and
Act No. 574, page 1089, Acts of 1928.

IX. That as a result of the inspection made by its field agent at Graniteville, South Carolina, on the 14th day of May, 1930, the defendants have assessed a documentary stamp tax of five thousand twenty and 46/100 dollars upon the notes given by the plaintiff to the bankers doing business in New York, Augusta, and Boston, hereinbefore mentioned, and have delivered to the plaintiff a schedule of said notes and an assessment of said tax which comprises Exhibit "A" of the complaint, to which reference may be had. That said action took place at Graniteville, South Carolina, on the date referred to.

That as a final action on their part, on the 16th day of June, 1930, the defendants notified the plaintiff that if it did not proceed to purchase documentary stamps in the amount of five thousand and twenty and 46/100 dollars and immediately place the same upon the notes in question, that the defendants would proceed to issue execution and to place the same in the hands of the Sheriff of Aiken County, and to have the same levied upon the plaintiff's property, [fol. 40] and to have the same sold in sufficient quantity to realize the amount of the tax and costs involved.

That the plaintiff owns a large cotton factory and much real estate and much personalty situated in Aiken County.

We consent:

Graniteville Manufacturing Company, by P. F. Henderson, Hendersons & Salley, its attorneys. W. G. Query, J. P. Derham, and F. C. Robinson, personally and as members of the South Carolina Tax Commission, by J. Fraser Lyon, General Counsel.

[fol. 41] IN UNITED STATES DISTRICT COURT

STATEMENT RE TEMPORARY RESTRAINING ORDER AND APPLICATION FOR INJUNCTION

Hon. Ernest F. Cochran, District Judge of the Eastern District of South Carolina, granted a temporary restraining order and an order calling to his assistance Hon. John J. Parker and Hon. Elliott Northcott, Circuit Judges of the Fourth Circuit, and after the giving of the required notice both to the Governor and to the Attorney General of South Carolina, this cause was heard upon an application for an interlocutory injunction before said Court so constituted, on July 17, 1930.

[fol. 42] IN UNITED STATES DISTRICT COURT

GRANITEVILLE MANUFACTURING COMPANY, Plaintiff

vs.

W. G. QUERY, J. P. DERHAM, and F. C. ROBINSON, as Members of South Carolina Tax Commission, Defendants

OPINION—Filed October 17, 1930

ERNEST F. COCHRAN, District Judge:

The plaintiff brought suit against the defendants as members of the South Carolina Tax Commission to enjoin them from enforcing the collection of certain documentary stamp taxes. The matter comes up upon an application

for an interlocutory injunction, made before three judges under the provisions of Section 266 of the Judicial Code, as amended (Title 28, Section 380, U. S. Code).

The parties have entered into a written stipulation as to the facts of the case, which has been filed as a part of the record in the cause. The new equity rule 70½ recently promulgated by the Supreme Court requires the courts of first instance, in deciding suits in equity, to find the facts and state the conclusions of law thereon, separately. Where all of the facts have been stipulated by the parties and made a part of the record, it would seem unnecessary to recite the facts in any opinion or decree made by the court, or make any special finding thereon. However, to avoid [fol. 43] any uncertainty, we find all the facts as set forth in the stipulation, but do not deem it necessary to restate them in detail in this opinion, but will make only such brief statement as may be necessary for a proper understanding of the grounds of our decision.

The facts are substantially as follows:

The plaintiff is a South Carolina corporation, with its principal place of business at Graniteville, S. C., and is engaged in manufacturing in that State. An agent for the South Carolina Tax Commission recently made an examination at the offices of the plaintiff at Graniteville, and found there a number of notes, which plaintiff had executed to various banks outside of the State of South Carolina, and which had been paid. They were not stamped. The Tax Commission, pursuant to the laws of South Carolina, assessed a documentary stamp tax of $5,020.46 upon these notes, and notified the plaintiff that if it did not proceed to purchase documentary stamps in that amount and place the same upon the notes, they would proceed to issue execution and have the same levied upon plaintiff's property under the provisions of the South Carolina law. These notes were executed at various times from July 24, 1923, to March 12, 1930. The notes were all payable to banks, at their banking houses, respectively, outside of South Carolina, none of them being located or doing any business within that State. The custom and practice between the plaintiff and each of the banks was that in each instance, at the office of the bank, a line of credit was first established; that is, an agreement was made that the plaintiff's borrowing from the bank should never exceed a certain

amount, each specific loan to be made thereafter being subject to acceptance by the bank. When a loan was desired, the bank having been notified that a loan would be desired [fol. 44] at a certain date and an inquiry having been made of it as to the then existing discount rate, the note would be signed by the president or other executive officer of the plaintiff, and forwarded to the bank by mail. The note was subject to withdrawal and revocation by the plaintiff until it was actually received and accepted by the bank and the proceeds actually placed to the credit of the plaintiff in the bank. Each note was executed on a blank form, which reads as follows:

"Graniteville Manufacturing Company, Graniteville, South Carolina

"No. —. —— —, ——, 192-.

"On —— —, ——, for value received, we promise to pay $—thousand dollars, to the order of —— —— at their banking house in ——.

"Graniteville Manufacturing Company."

The date and amount involved and the name of the bank were filled in and the note made payable to the bank at its banking house (which was outside of South Carolina). Payment of the note was made to the bank at its banking house by the plaintiff sending checks from its office at Graniteville upon other banks; and when the note was paid, it was marked paid, or canceled, and returned to the plaintiff at Graniteville, S. C., and there kept. The plaintiff did not place any documentary stamps upon any of its notes that were negotiated and placed with banks outside of South Carolina; acting, as it believed, within its legal rights and [fol. 45] with absolutely good faith, and not with any purpose of evading any just tax. The plaintiff from time to time borrowed funds and placed loans with banks located within the State of South Carolina, and always fully stamped said notes with South Carolina documentary stamps, as required by law.

The foregoing facts apply to all of the notes; but with reference to the place where the notes were signed, they may be divided into two classes. Prior to December 1, 1924, the plaintiff's executive officers resided in Augusta, Ga.,

and all of its notes, up to that time, were signed by its executive officers in Augusta, Ga., and mailed from there to banks outside of South Carolina, and those notes were never in the State of South Carolina until after they were paid and returned to the plaintiff at its office at Graniteville, S. C. But after December 1, 1924, plaintiff's executive officers resided at Graniteville, S. C., and the notes executed subsequent to that time were signed by those officers at Graniteville, S. C., placed in the mail there for delivery to the bank outside of South Carolina, and upon payment, were later returned to the plaintiff at Graniteville, S. C. The plaintiff owns a large cotton factory and real estate and much personalty in Aiken County, S. C., which would be subject to levy and sale under the laws of South Carolina.

The first question is whether or not the plaintiff has an adequate remedy at law. Unless there is an adequate remedy at law, an injunction is a proper remedy. But the remedy at law must be plain, full and complete, and where the remedy at law is doubtful, the taxpayer is not compelled to speculate as to what the decision of the court of law will be, whether State or Federal, but is entitled to an injunction.

[fol. 46] Davis v. Wakelee, 156 U. S. 680.
Union Pacific R. Co. v. Weld Co., 247 U. S. 282.
Dawson v. Kentucky Distilleries, 255 U. S. 296.

See also Southern Ry. Co. v. Query, 21 Fed. (2d) 333, 337, where a number of other Supreme Court decisions supporting the same propositions are cited.

The authority for the imposition of stamp taxes, during the time the plaintiff's notes were executed, is found in various acts of the Legislature of South Carolina, beginning in 1923; the last Act being Act No. 574 of the Acts of the General Assembly of South Carolina of 1928 (pp. 1089-1142) approved March 10, 1928. All of them contain the following provisions:

"There shall be levied, collected and paid, for and "in "respect of the several bonds, debentures or certificates of "stock and indebtedness, and other documents, instru-"ments, matters and things mentioned and described in "Schedule A of this Act, or for or in respect of the vellum, "parchment, or paper upon which such instrument, matter

"or things, or any of them, are written or printed, by any "person who makes, signs, issues, sells, removes, consigns "or ships the same or for whose benefit or use the same "are made, signed, issued, sold, removed, consigned, or "shipped, the several taxes specified in such schedule."

* * * * * * *

"Schedule A

* * * * * * *

"Promissory notes, except bank notes issued for circu-
[fol. 47] "lation * * * and for each renewal of the "same."

It was conceded by the counsel for the defendants that there is no remedy at law by which these taxed can be recovered after payment, unless it is contained in Section 29 of the Act of 1928. That section is as follows:

"§ 29. Parts of Act Independent—Taxes to be Paid "under Protest—Sure for Recovery.—That if any clause, "sentence, paragraph or part of this Act shall, for any "reason, be adjudged by any court of competent jurisdic- "tion to be invalid, such judgment shall not affect, impair "or invalidate the remainder of this Act, but shall be con- "fined in its operation to the clause, sentence, paragraph "or part thereof directly involved in the controversy in "which such judgment shall have been rendered. No cap- "tion of any Section or set of Sections shall in any way "affect the interpretation of this Act or any part thereof: "*Provided,* That the collection of the *license taxes* imposed "under the provisions of this Act shall not be stayed or "prevented by any injunction, writ or order issued by any "Court or Judge therein. In all cases in which any *license* "*or tax* is required to be paid hereunder by any person, "firm or corporation and the Tax Commission shall claim "the payment of the taxes so assessed, or shall take any "step or proceedings to collect the same, the person, firm "or corporation *against whom such license taxes are* "*charged,* or against whom such step or proceedings shall "be taken, shall, if he conceives the same to be unjust or "illegal for any reason, pay the *said taxes* notwithstand- "ing, under protest, in such funds and monies as the South

"Carolina Tax Commission shall be authorized to receive, [fol. 48] "and upon such payment being made said South "Carolina Tax Commission shall make proper note that the "same was paid under protest and notify the State Treas- "urer that *such taxes* were paid under protest; that the per- "son, firm or corporation *so paying said license taxes may "at any time within thirty (30) days after making "such payment,* but not afterwards, bring an action against "the said South Carolina Tax Commission for the recovery "thereof in any Court of competent jurisdiction and/or in "proper cases in the Federal Courts and if it be determined "in said action that such taxes were wrongfully and ille- "gally collected for any reason owing to the merits, then "the Court before which the case is tried shall certify of "record that the same were wrongfully collected and or- "dered to be returned with interest thereon at the rate of "four (4%) per centum per annum. Whereupon the Tax "Commission shall issue its warrant upon the State Treas- "urer for refunding the taxes and interest so paid, which "shall be paid in preference to other claims against the "treasury."

From the portions of this section which we have italicised, it appears clear that the remedy provided is only for the recovery of license taxes. It is true that in one place the language used is "license or tax"; but when the whole section is read, it will be seen that only license taxes may be paid under protest and recovered, and the expression "license or tax" is either an inadvertence or else the words "license or tax" were used as synonymous. In any event, those words must be construed in harmony with the remaining portions of the section, which speak only of "license taxes."

The tax in question, by the terms of the Act, is not a license tax, but a documentary tax. It is unnecessary to [fol. 49] enter into any complete analysis or discussion of the Act; but a careful reading of it discloses that the first class of taxes levied are documentary taxes, expressly so declared by the terms of the Act, levied directly on the documents themselves; and a number of other taxes which are levied are expressly denominated "license taxes" for the privilege of carrying on certain lines of business. The

first part of the Act deals solely with taxes on documents. The remaining part of the Act deals with taxes on certain lines of business and sales and all of the taxes imposed thereon are expressly declared by the Act itself to be license taxes. The Act clearly contemplates two classes of taxes: one class which it denominates documentary taxes, and another class which it denominates license taxes. It is perfectly apparent that the provision in Section 29 to permit the taxpayer to pay under protest and recover, refers only to the license taxes mentioned in the Act, and not to the documentary taxes. The plaintiff therefore has no adequate remedy at law to recover any of these stamp taxes on documents.

This brings us to the merits of the case. The plaintiff claims that the notes in question had no taxable situs in South Carolina, and any Act of that State imposing a tax thereon would be in contravention of the Fourteenth Amendment to the Constitution of the United States. We shall discuss, first, but very briefly, those notes which were executed in Augusta, Ga., and mailed there to banks outside of South Carolina, and which were never in the State of South Carolina until after they were paid and returned to the plaintiff at Graniteville, S. C. As to those notes, we are clearly of opinion that they were beyond the taxing power of the State. The whole transaction from its inception by the signing of the note in Georgia to its consummation by payment in a State other than South Carolina, was [fol. 50] entirely beyond the borders of South Carolina and consequently beyond the power of that State to tax. It is perhaps superfluous to cite decisions to sustain the proposition that a State cannot tax property which has no legal situs within the State. The late cases upon this subject all recognize and affirm this proposition. See Blodgett v. Silbermann, 277 U. S. 1. Safety Deposit & Trust Co. of Baltimore v. Virginia, 280 U. S. 83. Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204. Baldwin v. Missouri, 281 U. S. 587.

As to the stamp taxes demanded on those notes which were executed in Augusta, Ga., and mailed there to banks outside of South Carolina, the interlocutory injunction must be granted.

But as to those notes which were signed and mailed at Graniteville, S. C., different considerations must prevail;

and it is necessary to examine and discuss more fully the plaintiff's contention in that respect. The theory of the plaintiff is that under the four cases recently decided by the Supreme Court, which are cited above, the doctrine announced in Blackstone v. Miller, 188 U. S. 189, and kindred cases, has been swept away, and that the established doctrine now is that intangibles can have but one taxable situs, and that that situs can be only in the State of the domicile of its owner, even though the instrument itself may be physically in some other State. The plaintiff contends that the maxim of mobilia sequuntur personam must be applied to ascertain the taxable situs in all cases of intangibles; and that when the taxable situs is ascertained by the application of that maxim, namely, the residence of the owner, the intangibles may not be taxed anywhere else by any form of taxation. We do not deem it necessary to attempt to review the various cases decided by the Supreme Court [fol. 51] prior to the four cases mentioned. That has been done by the Supreme Court in those cases. We are not persuaded that the Supreme Court has established the doctrine as broadly as claimed by the plaintiff. A careful examination of the four cases relied upon by the plaintiff convinces us that they are not decisive of the question in the present case; nor do we think either the reasoning or the conclusion reached in those cases demands a decision in the present case in favor of the plaintiff.

The first of these cases in point of time is the Connecticut case, Blodgett v. Silbermann, supra. In that case it was held that the State of Connecticut might levy an inheritance tax, it being the State of the domicile of the decedent, upon the value of an interest in a partnership exisiting solely in New York State, and upon the value of bonds and certificates of the United States, which were physically kept on deposit in New York.

In the Virginia case, Safety Deposit & Trust Co. v. Virginia, supra, one Kellam, then domiciled and residing in Virginia, transferred and delivered to the Safety Deposit & Trust Co., for the benefit of his minor sons, stocks and bonds, with power to change the investments. He absolutely parted with title to the property. His sons were domiciled in Virginia, and the State of Virginia, after Kellam's death, levied a property tax on the bonds. The stocks and bonds were kept by the Safety Deposit & Trust Co., in

Maryland. The Supreme Court held that the absolute title to the bonds was in the Safety Deposit & Trust Co., which had its domicile in Maryland; that the stocks and bonds had acquired a situs separate from that of the beneficiary owners applied the maxim of mobilia sequuntur personam and [fol. 52] held that Virginia could not levy the tax.

In the Minnesota case, one Taylor, domiciled and residing in New York, died there. He owned and kept within the State of New York negotiable bonds and certificates of indebtedness issued by the State of Minnesota and cities of Minneapolis and St. Paul. Minnesota claimed an inheritance tax upon the theory of Blackstone v. Miller; that the debtor, or maker of the bonds and certificates, was within her jurisdiction; that they were debts of Minnesota and her corporations, subject to her control; and that her laws protected them and gave them validity and provided means for enforcing payment. The Supreme Court however definitely overruled Blackstone v. Miller, and held that the facts were not sufficient to create a taxable situs in Minnesota.

In the Missouri case, Baldwin v. Missouri, supra, Mrs. Baldwin resided in Illinois, and had never been in Missouri. By her will, she left all her property to her son, a resident of the same place, and appointed him sole executor. The will was duly probated at her residence and under the statute of Illinois, an inheritance tax was there laid upon the value of all her intangible personalty, wherever situated. Ancilliary letters of administration were issued in Missouri, and a report to the court in that State showed that at the time of her death, Mrs. Baldwin owned credits for cash deposits with banks located in Missouri, certain United States coupon bonds, and sundry promissory notes which were then physically within Missouri. Most of these notes were executed by citizens of Missouri, and the larger part were secured by liens upon lands lying therein. Missouri sought to impose an inheritance tax on these bank deposits, bonds, and notes. The court held that the bank deposits, bonds, and notes were mere choses in action, and even though they [fol. 53] were physically within the State of Missouri, they had their situs at the domicile of the creditor, and were not within Missouri for taxation purposes; that they passed from the dead to the living in Illinois, where they were actually taxed, and that the transfer was not in Missouri and not subject to her power.

The broad claim of the plaintiff is that under these decisions, the situs of choses in action is the domicile of the owner, and that they can have no other legal situs whatsoever for taxable purposes, under any circumstances. We think it is clear that these decisions do not go that far. They do not hold that the maxim mobilia sequuntur personam (which after all is a mere fiction of law) must be universally applied in all situations. In the present case, we have a corporation chartered by the laws of South Carolina, with an established office in that State, doing business there, signing and issuing in that State notes in the conduct of its business, and mailing them in that State; and in our opinion, to apply the maxim in such a case, and hold that such transactions were wholly beyond the borders of the State and therefore beyond her taxing power, would be to make the fiction of the maxim override the actual facts of the case. The tax in this case is not a property tax upon intangibles, the title to which is held elsewhere, as in the Virginia case. Nor is it a tax upon a transfer of intangibles when the transfer occurred wholly without the State, as in the Minnesota and Missouri cases. Nor is it a tax sought to be imposed because of the physical presence of intangibles owned in another State, as was likewise the situation in the Missouri case. But the tax in the present case is a tax upon the creation within the State of South Carolina of evidence of a debt. These notes were created, if not [fol. 54] wholly, certainly partly, within the State of South Carolina. The object taxed, therefore, namely, the creation of the evidence, was within the State, and subject to the power of the State. The tax is laid upon the documents themselves, and required to be paid by the person who makes, signs or issues them. The documents were within the State, made, signed and issued there. None of these facts appears in any of the cases relied upon by the plaintiff. They give a legal, taxable situs in South Carolina.

The plaintiff further argues, however, that inasmuch as it had the right of revocation until the note was received and accepted by the bank, and inasmuch as the bank had the right to decline to accept the note, the contract was not completed until after the note had passed beyond the power of South Carolina. He cites numerous cases upon the question that the law of the place where the contract is finally accepted or delivered, governs. But we do not think the

question presented here is controlled by decisions relative to the law governing the contract. The question before us is whether the acts in question were so wholly beyond the State of South Carolina as to be beyond her power to tax. The statute of South Carolina is broad enough to cover the case of notes actually signed and placed in the mail for delivery, even though there is a right of revocation by the plaintiff, or rejection by the bank. In view of the broad language of the statute, in the absence of a decision by the State court, we are not disposed to construe the statute as not applying to such a case. The real question before us is whether, when the statute has been applied to such a case, as has been done here by the Tax Commission, it violates the Fourteenth Amendment. We do not think so. It was competent for South Carolina to lay a tax upon these [fol. 55] acts occurring within her borders, even though the contract might not be fully consummated by the acceptance of the bank, or might be defeated by the revocation of the plaintiff.

The plaintiff contends also that the laying of the tax in question is a burden upon interstate commerce. But under the decisions of the Supreme Court it is plain that the notes in question did not constitute interstate commerce. They are mere personal contracts. The making of such a contract is a mere incident of commercial intercourse, and sending the notes by mail or otherwise from one State to another does not constitute interstate commerce. See New York Life Ins. Co. v. Deer Lodge County, 231 U. S. 495, where the subject is fully discussed and the decisions reviewed.

For these reasons, we think that so far as concerns those notes which were signed and mailed in South Carolina, the interlocutory injunction must be refused.

An appropriate order in accordance with the views herein expressed will be duly entered.

We concur in the foregoing opinion.

John J. Parker, United States Circuit Judge for the Fourth Circuit. Elliott Northcott, United States Circuit Judge for the Fourth Circuit. Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina.

[fol. 56] IN UNITED STATES DISTRICT COURT

GRANITEVILLE MANUFACTURING COMPANY, Plaintiff,

vs.

W. G. QUERY, J. P. DERHAM, and F. C. ROBERTSON as members of South Carolina Tax Commission, Defendants

ORDER GRANTING PRELIMINARY INJUNCTION IN PART AND REFUSING SAME IN PART—Filed October 17, 1930

The plaintiff having made application for an interlocutory injunction and the parties having entered into a written stipulation of the facts and the said application having been duly heard before three judges as required by law, and the court having found the facts as contained in the said written stipulation,

Now, upon the said facts and for the reasons set forth in an opinion of the court filed this day, it is

Ordered:

1. That as to the stamp taxes demanded upon those notes set forth and described in the bill of complaint which were signed by plaintiff's officers at Augusta, Ga., and mailed from there to banks outside of South Carolina, the restraining order heretofore granted in this case, dated June 24, 1930, be and the same is hereby continued in force, and the defendants and each of them and all persons whomsoever acting by, through, or for them, be and they are hereby restrained and enjoined, pending the final hearing and determination of the cause upon the merits, and until the final [fol. 57] order of this court, from doing any acts whatsoever towards assessing against or collecting from the plaintiff, any stamp tax on said notes and from proceeding criminally against the plaintiff or any of its officers, agents, or servants, in respect thereto; provided, that the plaintiff shall within ten (10) days from the date of this order execute and file with the clerk of this court a bond with good and sufficient surety, approved by said clerk, in the sum of Five hundred dollars ($500.00), conditioned for the payment to the defendants of all costs and damages they may sustain by reason of the granting of this interlocutory injunction, in case it should be finally held that it ought not to have been granted.

2. That as to the stamp taxes demanded upon those notes set forth and described in the bill of complaint which were signed by the plaintiff's officers at Graniteville, S. C., and mailed from there to banks outside of the State of South Carolina, the application for an interlocutory injunction be and the same is hereby refused, and the said restraining order heretofore granted be and the same is hereby dissolved, insofar as it restrains or enjoins the assessment or collection of stamp taxes in respect to the said last mentioned notes.

Dated this 17th day of October, 1930.

John J. Parker, United States Circuit Judge for the Fourth Circuit. Elliott Northcott, United States Circuit Judge for the Fourth Circuit. Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina.

[fol. 58] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND SUPERSEDEAS.—Filed November 10, 1930

To the Honorable John J. Parker, Circuit Judge; To the Honorable Elliott Northcott, Circuit Judge; To the Honorable Ernest F. Cochran, District Judge:

And now comes Graniteville Manufacturing Company, the plaintiff and petitioner herein, by P. F. Henderson and Hendersons & Salley, its attorneys, and feeling aggrieved by the opinion and order of this Court entered on the 17th day of October, 1930, in so far as the same refused to grant a preliminary injunction prayed for in plaintiff's and petitioner's bill herein, hereby prays that an appeal may be allowed it from said decree to the Supreme Court of the United States, and that the Clerk of the District Court be directed to prepare and certify a transcript of the records and proceedings in said cause to the said United States Supreme Court at Washington, D. C., in accordance with its rules and practice, and for the reasons specified and set out in the assignment of errors filed herewith, in order that the errors complained of in the said assignment of errors may be reviewed and, if error be found, corrected accord-

ing to the laws and customs of the United States, and that [fol. 59] all further proceedings herein after the allowance of said appeal be transferred to the said Supreme Court of the United States of America.

Petitioner further prays that an order of supersedeas may be granted herein pending the final disposition of the cause, and that the amount of the security therefor, and for costs, be fixed by the order allowing this appeal.

Graniteville Manufacturing Company, by P. F. Henderson, by Hendersons & Salley, its Counsel.

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL AND TO OPERATE AS SUPERSEDEAS.—Filed November 10, 1930

The plaintiff and petitioner herein having prayed for the allowance of an appeal to the Supreme Court of the United States from the decree made and entered in said cause by the Statutory Court sitting in and with the District Court for the Eastern District of South Carolina, on the 17th day of October, 1930, in so far as the same refused to grant a preliminary injunction as sought and prayed for in plaintiff's complaint or bill herein, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal pursuant to the Statutes and Rules of the Supreme Court of the United States in such cases made and provided, it is now hereby

Ordered

That an appeal be, and the same is hereby allowed as prayed for to the Supreme Court of the United States in this cause and as provided by law; and,

It is further ordered that the Clerk of this Court shall prepare and certify a transcript of this record and proceed-[fol. 61] ing and decree in accordance with the Statutes and Rules of the Supreme Court of the United States, and transmit the same to the Clerk of the Supreme Court of

the United States at Washington, D. C., so that he shall have the same in said Court within thirty days from this date; and,

It is further ordered that this order operate as a supersedeas, and that the supersedeas bond be, and the same is hereby fixed in the sum of $5,000.00; and,

It is further ordered that the security for costs be, and the same is hereby fixed in the sum of $250.00.

Dated Oct. 29, 1930.

John J. Parker, U. S. Circuit Judge for 4th Circuit; Elliott Northcott, U. S. Circuit Judge for 4th Circuit; Ernest F. Cochran, U. S. District Judge for the Eastern District of S. C.

[fol. 62] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Nov. 10, 1930.

And now comes Graniteville Manufacturing Company, the plaintiff and petitioner herein, through its counsel, and presents this assignment of errors, and says that in the records and proceedings in the above entitled cause and the resultant decree made and entered against it on the 17th day of October, 1930, there is error in the particulars hereinafter set out—that is to say; (reference always being had only to the notes executed by plaintiff within the State of South Carolina as to which the Court refused to enjoin the threatened collection of a tax):

I

That the Court erred in making the decree herein.

II

That the Court erred in holding that the notes set up and described in the bill or complaint herein had a taxable situs in South Carolina.

[fol. 63]

III

That the Court erred in not holding that the notes set up in the bill or complaint herein had no taxable situs in the State of South Carolina, and that each of them as in-

tangibles had a taxable situs only in the State of the domicile of the owner; that is to say in the States of New York, Massachusetts, or Georgia; and that for the State of South Carolina to attempt to tax each and all of said notes under its Documentary Stamp Tax Acts was in effect the taxing of property existant only beyond its borders, and was the taking of property without due process of law, rendering said Documentary Stamp Tax Acts and all proceedings thereunder in this regard to be repugnant to the Fourteenth Amendment of the Constitution of the United States.

IV

That the Court erred in not holding as that each of the notes set up and referred to in the complaint or bill were negotiated within and were payable in States other than South Carolina, were subject to acceptance or confirmation upon their receipt by the bankers to whom they were made in other states, and were revocable by their maker until their acceptance by each of said bankers—all beyond the limits of South Carolina—, that they were not and never became notes in South Carolina, and that the effort to tax them under the Docmentary Stamp Tax Acts of South Carolina rendered said Acts and the proceedings thereunder the taking of property without due process of law, and rendered the same repugnant to the Fourteenth Amendment of the Constitution of the United States of America.

V

That the Court having held that the documentary stamp [fol. 64] tax in question was not a license tax but was a tax "levied directly upon the documents themselves" erred in holding that the tax was a tax upon "the creation" of the notes in question in South Carolina and was hence legal.

VI

That the Court erred in holding that the maxim mobilia sequuntur personam must yield to the fact that the notes in question were being created in South Carolina, in part, at least, thereby lending the maxim, in question, to the creation of double taxation should the state of the domicile of the banks to which said notes were drawn have or hereafter enact documentary stamp tax acts.

VII

That the Court erred in holding that because the tax in question was neither a property nor an inheritance tax that the maxim mobilia sequuntur personam was not applicable under the decisions of the Supreme Court.

VIII

That the Court erred in holding that because the papers in question were executed in South Carolina, they were taxable in that state, although they became the property of bankers in other states and were negotiated and made payable in other states, were there subject to acceptance or refusal after their receipt in the mails, and were until said time subject to revocation.

IX

That the Court having held that under the Documentary Stamp Tax Acts that plaintiff had no adequate remedy [fol. 65] at law, erred in refusing to grant a preliminary injunction restraining the defendants personally and as members of the South Carolina Tax Commission from proceeding to collect the tax set up and referred to in the complaint or bill, it having appeared and having been admitted that all of said papers, although executed within the State of South Carolina became the property of bankers residing beyond the limits of the State of South Carolina, and although it appeared and was admitted that said papers were subject to final acceptance after they reached the bankers in question through the United States mails, and that said notes were revocable by the plaintiff until they were finally accepted by said bankers and until the proceeds thereof had been placed to plaintiff's credit.

It is respectfully submitted by the plaintiff that under the facts stated herein which were admitted in the pleadings and proceedings herein, that the effort on the part of the State of South Carolina to collect the tax in question amounted to the taking of property without due process of law and rendered said proceeding and the Statutes upon which it was based repugnant to the Fourteenth Amendment of the Constitution of the United States;

For which errors the plaintiff, petitioner, and appellant prays that the decree of the District Court of the United

States for the Eastern District of South Carolina and of the Statutory Court sitting in and with said Court, dated the 17th day of October, 1930, in the above entitled cause, be reversed, and that the cause be remanded with directions to said Court to grant said preliminary order of injunction sought; and for such other and further relief as may be proper in the premises.

P. F. Henderson, Hendersons & Salley, Counsel for Plaintiff, Petitioner and Appellant.

[fol. 66] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL WITH ACCEPTANCE OF SERVICE—Filed Nov. 10, 1930

To W. G. Query, J. P. Derham, and F. C. Robinson, Personally and as Members of the South Carolina Tax Commission, or their attorneys:

Please take notice that the plaintiff and petitioner in the above entitled suit has appealed and does hereby appeal to the Supreme Court of the United States from the decree entered by the Statutory Court sitting in and with the District Court of the United States for the Eastern District of South Carolina, on the 17th day of December, 1930, in so far as the same refused to grant the preliminary injunction sought by the plaintiff or petitioner herein.

Attached hereto are copies of the petition for appeal, proposed order, assignments of error, citation, and supersedeas and costs bond.

Dated at Aiken, S. C. October 28th, 1930.

P. F. Henderson, Hendersons & Salley, Counsel for Graniteville Mfg. Co.

[fol. 67] Acceptance of Service

Service of the notice of appeal with papers attached as listed in the above entitled cause is hereby accepted, this 28 day of October, 1930, for and in behalf of the defendants or respondents therein.

W. G. Query, J. P. Derham, and F. C. Robinson, as Members of the South Carolina Tax Commission, by J. Fraser Lyon, Their Counsel.

[fols. 68 & 69] Supersedeas and cost bond on appeal for $5,250, approved and filed November 14, 1930, omitted in printing.

[fols. 70 & 71] Citation, in usual form, showing service on J. Fraser Lyon, filed November 15, 1930, omitted in printing.

[fol. 72] IN UNITED STATES DISTRICT COURT

PRÆCIPE OF APPELLANT—Filed Nov. 21, 1930

The Clerk of the District Court of the United States for the Eastern District of South Carolina will please proceed to make up the transcript of record in the above entitled cause, including therein:

(1) Amended complaint of bill in equity.

(2) State that same was accompanied by proper subpœna and that service of the same was duly accepted by the defendants.

(3) Amended answer of defendants.

(4) Agreed statement of facts.

(5) Statement that Hon. Ernest F. Cochran, District Judge of the Eastern District of South Carolina granted a temporary restraining order and an order calling to his assistance Hon. John J. Parker and Hon. Elliott Northcott, Circuit Judges of the Fourth Circuit, and after the giving [fols. 73-80] of the required notice both to the Governor and to the Attorney General of South Carolina, this cause was heard upon an application for an interlocutory injunction before said Court so constituted, on July 17, 1930.

(6) Opinion of Court and order thereon, both filed on October 17, 1930.

(7) Petition for appeal and supercedeas and order granting the same filed November —, 1930.

(8) Assignment of errors and petition for reversal filed with petition for appeal.

(9) Notice of appeal with acceptance of service thereof.

(10) Supercedeas and costs bond with approval thereof.

(11) Citation with acceptance of service.

(12) This præcipe.

(13) Designation of points relied on for reversal.
(14) Clerk's certificate.

P. F. Henderson, Hendersons & Salley, Plaintiff's-Petitioner's Attorneys.

Due legal service of a copy of the foregoing præcipe accepted, this 19 day of November, 1930.

J. Fraser Lyon, John M. Daniel, Attorneys for Defendants-Respondents.

[fol. 81] IN UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Dec. 29, 1930

Counsel for the plaintiff in error herein designate as the points upon which they rely to reverse the judgment of the Statutory Court which heard this cause, the points set out in the assignments of error (in which the same are more fully set out), to-wit:

That the Court erred in making the decree herein and erred in holding that the notes herein had a taxable situs in South Carolina, and in failing to hold that each of said notes as intangibles had a taxable situs only in the domicile of the State of its owner, to-wit: In New York, Massachusetts or Georgia, and that for the State of South Carolina to attempt to tax said notes amounted to the taking of property without the due process of law and rendered the Documentary Stamp Tax Acts of South Carolina and all proceedings thereunder in this regard to be repugnant to the Fourteenth Amendment of the Constitution of the United States.

Further, that the Court erred in not holding that inasmuch as the notes in question were negotiated within and payable in other states other than South Carolina, subject [fol. 82] to acceptanc of or confirmation upon their receipt by the bankers to whom they were made and were revocable by their makers until their acceptance by each of said bankers, all beyond the limits of the State of South Carolina, that said notes or papers were not and never became notes in South Carolina, and that the effort to tax them under the Documentary Stamp Tax Acts of South Carolina

rendered said Acts and all procedure thereunder the taking of property without due process of law, and rendered the same repugnant to the Fourteenth Amendment of the Constitution of the United States of America.

That the Court furher erred after correctly holding that the tax in question was not a License Tax but was a tax "levied directly upon the documents themselves," in holding that the tax was a tax "upon the creation" of the notes in South Carolina, and was hence legal; and in holding that the maxim mobilia sequuntur personam must yield to the fact that the notes were created in South Carolina, thereby lending said maxim to the creation of possible double taxation; and that the Court erred in holding that because the tax in question was neither a property tax nor an inheritance tax, that the maxim was not applicable; and that the Court erred in holding that because the papers were executed in South Carolina that they were taxable in that State; and that the Court, having held that there was no adequate remedy at law, erred in refusing to grant an interlocutory injunction restraining the defendants personally and as members of the State Tax Commission from proceeding to collect a tax, both because the notes referred to could have no taxable situs in South Carolina, and because they never became in reality notes within the State of South Carolina.

And appellant designates as the parts of the record [fols. 83 & 84] which it thinks necessary for the consideration of this appeal the amended bill with supporting affidavits and statement, the amended answer, the amended agreed statement of facts, the statment as to the subpœna and as to its service, the statement as to the issuance of a temporary restraining order and application for an interlocutory injunction, the opinion and order of the Court, the petition for appeal and supersedeas, and order allowing the same, the assignment of errors and notice of appeal and acceptance of both, the supersedeas and cost bond, the citation with acceptance of service, the præcipe and this designation.

P. F. Henderson, Hendersons & Salley, Appellant's Attorneys.

Due, legal service of a copy of the foregoing designation of points relied on for reversal of parts of record neces-

sary to consideration of the appeal is hereby accepted, this 23 day of December, 1930.

John M. Daniel, Atty. Gen'l; J. Fraser Lyon, Appellees' Attorneys.

[fol. 85] [File endorsement omitted.]

Endorsed on cover: File No. 35,518. E. South Carolina D. C. U. S. Term No. 596. Graniteville Manufacturing Company, appellant, vs. W. G. Query, J. P. Derham, F. C. Robinson, personally and as members of the South Carolina Tax Commission. Filed December 15, 1930. File No. 35,518.

(351)

FILE COPY

FILED
JAN 14 1931
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1930

No. 596

GRANITEVILLE MANUFACTURING COMPANY,

Appellant,

vs.

W. G. QUERY, J. P. DERHAM AND F. C. ROBINSON, PERSONALLY, AND AS MEMBERS OF THE SOUTH CAROLINA TAX COMMISSION,

Appellees.

MOTION TO ADVANCE

P. F. HENDERSON,
HENDERSONS & SALLEY,
Solicitors for Appellant.

IN THE

Supreme Court of the United States

October Term, 1930

No. 596

GRANITEVILLE MANUFACTURING COMPANY,

Appellant,

vs.

W. G. QUERY, J. P. DERHAM AND F. C. ROBINSON, PERSONALLY, AND AS MEMBERS OF THE SOUTH CAROLINA TAX COMMISSION,

Appellees.

MOTION TO ADVANCE

And now comes the appellant and moves to advance the hearing of this appeal upon the calendar of the Supreme Court of the United States.

This is an appeal from the decision of a Statutory Court of three Judges directly to this Court, the Statutory Court having denied an application for an interlocutory injunction.

STATEMENT OF MATTER INVOLVED

Under the South Carolina Documentary Stamp Tax Act a tax is levied on promissory notes; said tax to be paid by affixing stamps. Appellant for many years has been making notes to banks in New York, Massachusetts, and Georgia, without paying the South Carolina Tax, claiming in good faith, that the Act is inapplicable to such notes. The State of South Carolina recently proceeded to endeavor to collect a tax against appellant amounting to more than five thousand dollars upon an accumulation of said notes. Appellant sought to enjoin said proceeding, alleging that the threatened tax was illegal and that the proceedings thereabout amounted to the taking of property without due process of law and was repugnant to the Fourteenth Amendment of the Constitution of the United States for the reasons:

(1) That said notes as intangibles could have but one taxable situs and that at the domicil of their owners namely: in New York, Massachusetts, or Georgia, and certainly not in South Carolina; and

(2) That said papers under the facts of this case (R. 34) did not become taxable notes until they were delivered and accepted and actually became complete and non-revocable in New York, Massachusetts or Georgia, and were never property existing or subject to taxation in South Carolina. It was alleged (R. 2 and 42), and the Court held, that there was no adequate remedy at law open to appellant.

REASONS SUPPORTING THE MOTION:

Appellant submits that the appeal should be advanced because a question of public interest is involved, and because the further action of this appellant and of many other tax-

payers in like plight, for whose benefit this action is also brought, remain unsettled until the law upon this subject is adjudicated, and because similar questions are daily arising in the State of South Carolina and the important question involved should be settled as soon as may be.

NOTICE OF MOTION TO OPPOSING COUNSEL:

The appellant hereby gives notice to opposing counsel that this motion to advance will be presented to the Supreme Court of the United States at noon on Monday, January 26, 1931.

Respectfully submitted,

P. F. HENDERSON,

HENDERSONS & SALLEY,

Solicitors for Appellant.

January 8, 1931.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, PERSONALLY AND AS MEMBERS OF SOUTH CAROLINA TAX COMMISSION.

STATEMENT OF JURISDICTION.

P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Appellant.

(35,518)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, PERSONALLY AND AS MEMBERS OF SOUTH CAROLINA TAX COMMISSION, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

STATEMENT OF JURISDICTION.

In compliance with Rule 12 of this Court, appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above entitled cause.

A.

Statutes.

The statutory provisions relied upon to sustain jurisdiction are those allowing a direct appeal to the

Supreme Court of the United States from the denial of an application for an interlocutory injunction by a Statutory Court of three Judges, under the circumstances hereinafter set out, namely:

Section 266 of the Judicial Code as amended (U. S. C., Title 28, Section 380) and Section 238 thereof (U. S. C., Title 28, Section 380).

B.

Decree.

The final decree sought to be reviewed on this appeal was entered in the District Court on the 17th day of October, 1930 (R. 56).

The petition for appeal (R. 58) was filed and the order allowing the appeal was entered and filed on the 10th day of November, 1930 (R. 60).

C.

Nature of the Case and Rulings Below.

This suit (R. 2) was brought in the District Court to enjoin the threatened collection of a tax amounting to more than $5,000 through execution against and sale of appellant's property by appellees, acting as members of South Carolina Tax Commission, an administrative board of said State, and acting to enforce an order of such board made under and pursuant to a statute of said State. The suit was based on the ground of the unconstitutionality of such Statute and the proceeding had thereunder. The appellant sought an interlocutory injunction (R. 2 and 4), as well as a

permanent injunction, and the District Judge, acting under Section 266 of the Judicial Code as amended, called (R. 41) two Circuit Judges to his aid, and said three Judges, sitting as a Statutory Court, heard the application for an interlocutory injunction (R. 41). The ruling of the Court was a denial of the application for an interlocutory injunction (R. 56). This appeal was taken, and allowed by said three Judges (R. 60), directly to the Supreme Court, within thirty days after the filing of the order denying the interlocutory injunction.

Appellant's claim (R. 2) was that appellees were threatening to enforce a documentary stamp tax under a Statute of South Carolina upon notes executed by it and delivered to banks in New York, Massachusetts, and Georgia, and that said threatened tax was illegal and that the proceeding thereabout amounted to the taking of property without due process of law and was repugnant to the Fourteenth Amendment of the Constitution of the United States for the reasons (1) that said notes as intangibles could have but one taxable *situs*, and that at the domicile of their owners, namely, in New York, Massachusetts, or Georgia, and certainly not in South Carolina, and (2) that said papers under the facts of this case (R. 34) did not become taxable notes until they were delivered and accepted and actually become complete and non-revocable in New York, Massachusetts or Georgia, and were never property existing and subject to taxation in South Carolina. It was alleged (R. 2 and 42) and the Court held that there was no adequate remedy at law open to appellant.

It is to be noted that the Court below held that notes executed by appellant in Georgia could not be taxed in South Carolina and enjoined the threatened collection of a tax thereon. No appeal was taken from this action of the Court, hence no reference has hereinbefore been made to this phase of the case.

D.

Cases Relied on to Sustain the Jurisdiction.

Smith *vs.* Wilson, 273 U. S. 388.

Davis *vs.* Wallan, 257 U. S. 482.

Safe Deposit & Trust Company *vs.* Virginia, 280 U. S. 83.

Farmers Loan & Trust Company *vs.* Minnesota, 280 U. S. 204.

Baldwin *vs.* Missouri, 281 U. S. 586.

Beidler *vs.* South Carolina Tax Commission (decided November 24, 1930).

Coughlan *vs.* South Carolina Railroad, 142 U. S. 101.

Phipps *vs.* Harding, 70 Fed. 468.

We respectfully submit that the Court has jurisdiction of this appeal by virtue of the statutory provisions hereinabove designated.

Respectfully submitted,

P. F. HENDERSON,
HENDERSONS & SALLEY,
Solicitors for Appellant.

DECEMBER 27TH, 1930.

FILED
FEB 20 1931
CHARLES ELMORE CROPLEY
CLERK

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, PERSONALLY AND AS MEMBERS OF SOUTH CAROLINA TAX COMMISSION, RESPONDENTS.

ARGUMENT FOR APPELLANT

P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Appellant.

(35,518)

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SUPREME COURT OF THE UNITED STATES.

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GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, PERSONALLY AND AS MEMBERS OF SOUTH CAROLINA TAX COMMISSION, RESPONDENTS.

ARGUMENT FOR APPELLANT

This is an appeal from an order of a Statutory Court of Three Judges refusing an interlocutory order sought by the appellant in the District Court, for the Eastern District of South Carolina, to enjoin the respondents as members of the South Carolina Tax Commission from collecting a tax under a Statute of the State of South Carolina. The opinion of the Statutory Court is reported in 44 Fed. (2nd) 64.

A statement of jurisdictional grounds has been heretofore submitted. The federal question lies in the contention that there is an attempt to levy and collect a tax on property that has no taxable *situs* in South Carolina, and is non-existent therein, and that the proceedings and statute thereabout are repugnant to the Fourteenth Amendment of the Federal Constitution. This question was, of course, made before the Statutory Court. The tax in question is $5,020.46. The Statutory Court affirmatively held with appellant (R. 31) that the taxing statute provided no adequate remedy at law, and that if appellant is entitled to relief that an injunction would be essential. No argument is presented herein as to this question, as the opinion of the Statutory Court fully covers this matter, and as there is no assignment of error to the contrary. Appellant relies upon all of its assignments of error.

Statement of Facts and of Appellant's Contention.

On March 26, 1923, the South Carolina Legislature passed an Act (AA. 1923, page 12), "to raise revenue for the support of the State Government." The Act first levied a tax "for and in respect of the several bonds, debentures or certificates of stock and of indebtedness and other documents, matters, and things mentioned and described in Schedule *A* of this Act, or for *and in respect of the vellum, parchment, or paper* upon which said instruments, matters, or things, or any of them, are written or printed." (Italics added.) Schedule *A* included "promissory notes," and provided for the affixing of a two cent stamp for each one hun-

dred dollars or fractional part thereof represented by said note. This was the first Documentary Stamp Act of the State of South Carolina. This original documentary stamp tax has been brought forward in four of the acts cited in the eighth paragraph of the complaint with no material change save as to the rate of the tax, and said tax now exists under Act 574, page 1089 of the Acts of 1928.

The Graniteville Manufacturing Company (hereinafter referred to as the Graniteville Company), throughout its existence, has been in the habit of financing its operations by borrowing on its promissory notes, from time to time, large sums of money. Practically all of these notes were executed at its office in Graniteville, South Carolina. It has always stamped its notes given to South Carolina bankers; it has always refrained from stamping its notes given to bankers and banking houses beyond the State of South Carolina—in good faith, believing that this was unnecessary. Shortly before this proceeding was commenced, an inspector of the South Carolina Tax Commission visited the Graniteville Company and, upon being allowed, at his request, free access to the books and notes of the Company, raised the contention that all notes given by the Graniteville Company and executed at Graniteville since the passage of the first Documentary Stamp Act should have borne documentary stamps of the State of South Carolina. He assessed a tax amounting to $5,020.46, and, as his assessment, left a schedule which is set out in the complaint as Schedule *A* (R. 16). The Tax Commission

then threatened, by issuing execution against its property, to force the Graniteville Company to purchase documentary stamps amounting to $5,020.46, and to affix the same to the canceled notes, and to cancel said stamps.

The Graniteville Company then brought this suit and obtained a temporary injunction (R. 28) which was vacated by the Statutory Court called to the assistance of the District Judge, which Statutory Court refused to issue an interlocutory injunction. Thereupon, this appeal was taken, a supersedeas having been granted.

It is the claim and contention of the Graniteville Company, both before the Statutory Court and before this Court, as its first position, based upon the recent series of decisions of this Court as to the taxation of intangibles: that the notes involved (all of which were executed by it and delivered to bankers doing business and having their business domiciles in New York, Boston, and Augusta, Georgia), had their taxable *situs* respectively in New York, Boston, and Augusta, alone; and that said notes, and none of them, could have any taxable *situs* in the State of South Carolina; and that no tax could be levied upon said notes by the State of South Carolina; and that the effort to do so is beyond the *power* of the State of South Carolina.

The Graniteville Company further claims, as a second position, that when its President signed in South Carolina one of the pieces of paper in question and mailed it to his banker in New York (say), that said paper did not become a note *in the taxable sense of the word* until it was finally accepted by the banker in

New York, for the reason that said note was revocable by the plaintiff until its final acceptance by the banker, and for the further reason that the banker, until he actually did place the money to the credit of the plaintiff in New York, could withhold his acceptance of said note.

All of the facts above stated were agreed facts so stated in a stipulation of counsel to be found in the record (R. 2-3).

In other words, it is the claim of the Graniteville Company that none of the notes executed by it in South Carolina had a taxable *situs* within the State of South Carolina, and specifically that none of the papers in question actually became *notes* and never existed as notes in a taxable sense within the State of South Carolina.

It should be noted that a very small per cent of the notes in question were actually executed in Augusta, Georgia, and that the Statutory Court held that this small per cent of said notes were not taxable by the State of South Carolina. No appeal has been taken from this decision. The tax upon such notes, however, amounts to but a few hundred dollars.

Law Relied on as to the First Contention.

Appellant relies as to its first contention, which is that the notes in question have no taxable *situs* in South Carolina, but have a taxable *situs* only where their owners are domiciled: namely, in New York, Massachusetts, and Georgia, upon the recent series of decisions of this Court which abolished the old rule

of Blackstone *vs.* Miller, 180 U. S. 189, and established a new rule as to taxation of intangibles. These cases are:

Blodgett *vs.* Silberman, 277 U. S. 1.
Safe Deposit & Trust Company *vs.* Virginia, 280 U. S. 83.
Farmers Loan & Trust Company *vs.* Minnesota, 280 U. S. 204.
Baldwin *vs.* Missouri, 280 U. S. 566.
Beidler *vs.* South Carolina Tax Commission, decided November 24, 1930, 282 U. S. 1.

Under the rule established in the Blackstone case, certainly as to inheritance taxation, the State in which the debtor resided and in which the note was created might collect a tax as well as the State of the domicile of the creditor, upon the general theory that the debtor's State lent protection to the note. After deciding the Connecticut case (Blodgett *vs.* Silberman) and the Virginia case, which was a property tax case, and in which the maxim *mobilia sequuntur personam* was approved and enforced as to intangibles, this Court in the Minnesota case overruled the Blackstone decision expressly, and announced *a new rule for the taxation of intangibles.*

This Court first used the following language, which may be said to be the keynote of the present litigation, to-wit:

> "A very large part of the country's wealth is invested in *negotiable securities*, whose protection against discrimination, *unjust and oppressive taxation is matter of greatest moment.*" (Italics added.)

Then the Court stated the new rule as follows:

> *"We have determined that in general intangibles may be properly taxed at the domicile of their owner; and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to intangibles."* (Italics added.)

Shortly after this Court announced the new rule for the taxation of intangibles, the Missouri case (Baldwin *vs.* Missouri) was decided; the facts and findings in which are, we submit, especially applicable to the present litigation inasmuch as in the present litigation the contention of the State of South Carolina and the finding of the Statutory Court is that the notes in question may be taxed because they were signed in South Carolina.

In the Missouri case the decedent resided in Illinois. She had two bank accounts in the State of Missouri. She also owned sundry promissory notes secured *by mortgages on Missouri real estate, which notes and mortgages were actually physically kept in Missouri.* This Court held:

> "We find nothing to exempt the effort to tax the transfer of the deposits in Missouri banks from the principles applied in Farmers Loan & T. Co. *vs.* Minnesota, *supra.* So far as disclosed by the record the situs of the credit was in Illinois where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwhere.

> "The bonds and notes, *although physically within Missouri,* under our former opinions were choses in action with situs at the domicile of the creditor. At that point they too passed from the dead to the living and there this transfer was actually taxed. *As they were not within Missouri for taxation purposes the transfer was not subject to her power.* Rhode Island Hospital Trust Co. v. Doughton, 270 U. S. 69, 70 L. ed. 475, 43 A. L. R. 1374, 46 Sup. Ct. Rep. 256."

It is to be particularly noted that although the notes in question were as the Court stated it "physically within Missouri," that the Supreme Court held that "*they were not within Missouri for* taxation purposes," and hence were "*not subject to her power.*"

Hence, we submit that although the notes that we are concerned with in the instant case were executed in South Carolina, and although, after they have been paid and canceled, they have been brought back to the State of South Carolina and were found by the inspector of the Tax Commission within the State of South Carolina, still for the purposes of taxation they could have but one taxable *situs* and that taxable *situs* was at the domicile of the bank to whom each note was given, which domicile was in New York, Massachusetts or Georgia.

It is not anticipated that the fact that no documentary stamps are required to be placed upon the promissory notes in New York (say) will, in any fashion, affect the question. New York State requires the affixing of stamps on the transfers of stock in the great New

York Stock Exchange, thereby having definitely entered the field of documentary stamp taxation (Beane *vs.* Flint, 204 N. Y. 153, 97 N. E. 496).

In the Missouri case, *supra*, this Court denied the plea that because the taxpayer *might evade the payment* of the tax in Illinois, that this gave Missouri a right to assess a tax. The point is not that the notes signed by the plaintiff are actually taxed in New York, but that their *only taxable situs* under the recent decisions of the United States Supreme Court is in New York (say) and not in South Carolina.

Findings of the Statutory Court Upon the First Issue and Argument Thereupon.

(1) *The Nature of the Tax.*

The Statutory Court first agreed with the appellant, and held, we submit, correctly, that a tax levied by the South Carolina Documentary Stamp Tax Act was not a license tax—not a tax on the privilege of signing the notes—but was a direct tax on the notes themselves. The Court said (R. 33):

> "The tax in question, by the terms of the Act, *is not a license tax,* but a documentary tax. It is unnecessary to enter into any complete analysis or description of the Act; but a careful reading of it discloses that the first taxes levied are documentary taxes, expressly so declared by the terms of the Act, *levied directly on the documents themselves.*" (Italics added.)

The Court further said (R. 37):

> "The tax is laid upon the documents themselves."

The correctness of this holding is demonstrated by the fact that the South Carolina Documentary Tax Act is copied bodily from the Emergency War Expenditures Act passed by Congress on June 13, 1898 (U. S. Stat. at Large, Vol. 30, pp. 448, 451). That Act was construed by this Court in Nichol *vs.* Ames, 173 U. S. 509, 519. In referring to the part of the Act of Congress which was borrowed by the South Carolina Act, this Court said:

> "The tax laid, in the same Act, upon a broker's note of sale is a separate tax; although it may have reference to the same transaction, *it is a tax on the note or memorandum itself.*" (Italics added.)

(2) *Can the Tax be Sustained, or Not, as Being a Tax on the Creation of the Notes?*

After holding that the South Carolina tax was not a license tax but "*a tax levied directly on the documents themselves,*" the Statutory Court, after adverting to the new rule laid down by this Court in the Minnesota decision, held that the notes in question, although owned by a banker in New York (say), could be taxed in South Carolina because they were created in South Carolina. The Court said:

> "But the tax in the present case is a tax *upon the creation within the State of South Carolina*

> *of evidences of a debt.* These notes were created, if not wholly, certainly partly, within the State of South Carolina. The object taxed therefore, namely, *the creation* of the evidence, was within the State, and subject to the power of the State." (Italics added.)

In reply to this holding, we submit, first, that if the Act is not a License Tax Act, that it cannot be a tax *on the creation* of the notes. We submit that if it be a tax, as the Court has held, "*directly on the documents themselves,*" that it cannot be a tax on the creation of the documents. To take the case as we find it, we submit that the fact alone that the tax in question is not a license tax is fatal to its present enforcement.

But the broader objection we submit to the Court's holding is that the reasoning indulged in by the Court is not a successful differentiation of the instant case from the new rule of taxation of intangibles set out in the Minnesota decision. The new rule was established specifically to *protect negotiable securities from taxation in the State of their creation,* and in the State where they must be enforced, and to permit taxation only in the State in which their owners are domiciled. Now, to allow South Carolina to tax the notes involved in this litigation, under any kind of taxing law (whether it should be a License Tax Act or not), because they are created in and under the laws of South Carolina, would be to hark back to the rule of the Blackstone decision, we submit, which old and now abrogated rule allowed a tax to the debtor's State because that State lent the protecting wing of its laws to the

notes or the debt throughout their whole existence, both in their creation and in their final enforcement. In the Minnesota decision, in the Missouri decision, in the Virginia decision, and in the South Carolina decision of Beidler *vs.* South Carolina Tax Commission—in each of these cases the debts were contracted and created, and the notes, bonds, or evidences of indebtedness in each of said cases in which the same existed, were created in the States of the domicile of the debtor, just as the notes in the present case were signed and created, in part, at least, in South Carolina; but, in each of the cases stated, the fact that said debts, notes, or securities were created in the State of the domicile of the debtor, were not allowed under the new rule enunciated in the Minnesota case to be sufficient to permit any State other than the State of the domicile of the debtor to collect a tax.

(3) *The Fiction or Maxim Mobilia Sequuntur Personam as Applicable to Documentary Stamp Taxation.*

The Statutory Court further intimated that the new rule laid down in the Minnesota case as to the taxation of intangibles, which definitely applies to property taxation (as held in the Virginia case: Safe Deposit & Trust Company *vs.* Virginia, *supra*) and to inheritance taxation, cannot be applied to documentary stamp taxation.

In reply to this position, we submit that Mr. Cooley in his Work on Taxation, at section 42, states that there are only three kinds of taxes:

(1) Property taxation,

(2) Capitation taxation, and

(3) Excise taxation.

In Section 1673, Mr. Cooley states that the third of his great divisions of taxation—excise taxation—is in turn divided in many subdivisions. One of these subdivisions is inheritance taxation; and another subdivision is documentary stamp taxation. In Section 47 he specifically says: "Stamp taxes are one form of excise taxes." This Court then has applied the new rule as to the taxation of intangibles, to property taxation, the first of the three recognized main divisions into which all taxation must fall. This Court has also applied the rule specifically to inheritance taxation, which is a subdivision of the third main division of all taxation, to wit, excise taxation. Documentary stamp taxation is but another subdivision of excise taxation. As the new rule applies to property taxation and to inheritance taxation, which is but one form of excise taxation, we submit that this Court has evinced by its recent decisions an intention to cover the whole field of the taxation of intangibles by the new rule, and that there is no reason to go back to the old rule in order to sustain the proposed South Carolina Documentary Taxation.

The Second Issue.

The Notes Were Non-existent as Taxable Notes in South Carolina.

Our second position is that, from a standpoint of taxation, at least, the notes involved in this case never

actually became notes until their final delivery and final acceptance was completed. That until then they were nullities; mere pieces of paper. That the final delivery and acceptance in question (referring to the New York notes hereafter as typical of all notes) occurred in New York City; that then—and then only—did they become notes; until then they were revocable by the Graniteville Company. The agreed statement of facts in this case (R. 23) show that all of the notes were payable in New York (say), and that the contract between the banks and the Graniteville Company, in each instance, arranging for an indefinite line of credit, was entered into in the *office of the bank in New York;* "each specific loan to be made thereafter to be subject to acceptance by the bank from whom it was sought." That thereafter the plaintiff, in each instance, after making an inquiry only "as to the then existing discount rate," and with no committal whatsoever on the part of the bank that it would make the specific loan, would sign and mail the notes from South Carolina. Then the agreed statement of facts expressly states the facts to be, "That said paper *was subject to withdrawal and revocation by the plaintiff until it was actually received by the bank in question* in the City of New York * * *, and until said note after its acceptance in New York * * * *was accepted by said bank* and the proceeds thereof were actually put to the credit of the plaintiff." Hence, we submit that it took much more than the mere signing of the papers in question to make them *notes.*

The Statutory Court held, in keeping with its decision upon the first issue, that the tax was levied upon the act of creation and that the South Carolina Statute is broad enough to cover that act. We respectfully submit that the matter is not one of statutory construction at all, but rather is a consideration of when and where the papers, although signed in South Carolina, actually became, in fact, *notes*. If the signing in South Carolina did not make them notes, then they were never notes in South Carolina, and hence were not taxable in South Carolina as notes. From the standpoint of the law of taxation there is a dearth of decisions; there being few, if any, States which tax notes other than South Carolina. Some light can be found, however, in the myriad of cases on the subject of the conflict of law as to notes—that is, if a note is signed in South Carolina (say) in favor of a payee in New York (say), does the law of New York or South Carolina govern.

We submit that the law is that the place of the signing of the note is not important. That even if the note is signed in South Carolina and mailed to New York that if by its terms it is payable in New York, all matters as to its performance are automatically controlled by the laws of New York; and as to its execution, even though it is signed in South Carolina and mailed to New York, that the delivery was not accomplished in South Carolina, but it was accomplished in New York and the laws of New York would control (1) if the plaintiff had the right of revocation until the note reached New York and until it was actually cashed by

the bank and the money put to the plaintiff's credit, or (2) if final acceptance by the bank is not accomplished until after the note arrives in New York.

In other words, the place of payment and the place of final delivery and of final acceptance are pivotal, and it will be found that the cases which hold that the law of the place of signing and mailing govern, are practically all cases in which the payee has sent a note to the maker for his signature, usually a renewal; and by signing at his domicile and mailing therefrom, the maker finally accepted the payee's proposal, and thereby at his (the maker's) domicile completely closed the contract *and lost complete control of the note,* and of his right of revocation, the acceptance of the payee having already been accomplished by his original proposal.

The Statutory Court seemed to agree with us that even though the notes in question were signed in South Carolina that, inasmuch as they were made payable in New York, were subject to revocation until they were finally accepted, and required final acceptance in New York by the banker before either the Graniteville Company or the banker became bound by them, that the law of New York would wholly cover them and that the law of South Carolina could not be invoked as controlling either their performance or their execution, although they were signed in South Carolina and mailed from South Carolina. Inasmuch as the Statutory Court has not disputed our position in this regard, we are not setting out in the body of this argument the authorities upon which we rely to establish these con-

clusions, but are setting the same out in an Appendix hereto.

It is our claim that if the notes in question cannot be said to be subject to the laws of South Carolina either as to their execution or as to their performance, that as notes they cannot be said to have ever existed in South Carolina. And, we submit, that when we come to a question of taxation that an even stricter rule should apply. The Supreme Court of South Carolina has definitely held that all substantial doubt should be resolved against the validity of a tax.

Columbia Railway & Gas Company *vs.* Carter, 127 S. C. 472;

Fuller *vs.* South Carolina Tax Commission, 128 S. C. 14;

Smith *vs.* State Highway Commission, 138 S. C. 374.

In its final analysis, the claim of the State of South Carolina is and must be, that although the Act in question is not a License Tax Act that the State claims a tax directly upon the notes themselves, although the laws of the State of South Carolina can in no fashion apply to them either as governing their execution (creation) or performance, and although the papers in question could not possibly become notes as long as they were within the borders of the State of South Carolina. To the contrary, we submit that what made them *notes* was what finally occurred in New York: namely, the final acceptance of the papers in question; their being discounted; and the money being placed to the credit of the Graniteville Company—all of which

occurred in New York and nowhere else. It was not until this occurred in New York that the right of the Graniteville Company to recall them ceased to exist.

We submit that the right of the State of South Carolina to tax the notes in question must be denied for both of the considerations hereinbefore set out, namely, (1) that the notes had no taxable *situs* in South Carolina, and (2) that the papers in question were non-existent as notes as long as they remained within the borders of the State of South Carolina.

All of which is respectfully submitted.

P. F. HENDERSON,
HENDERSONS & SALLEY,
Appellant's Attorneys.

APPENDIX.

Herein we set out the authorities submitted to the Statutory Court upon the second issue discussed in our argument.

These authorities, we submit, establish the fact that the law of New York (say) and not the law of South Carolina, would govern the notes in question both as to matters concerning their performance, but also as to matters concerning their execution. Said notes were signed in South Carolina, and mailed from South Carolina to New York, but were drawn payable in New York and were subject to final acceptance in New York and were revocable by the Graniteville Company until finally accepted.

The uniform negotiable instrument act which has been in force in all of the states in question for many years, provides as to revocations:

> "SECTION 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto."

Coughlan *vs.* South Carolina Railroad Company, 142 U. S. 101.

In this case the South Carolina Railroad Company executed bonds, which were executed within the State of South Carolina and transmitted presumably by mail to London, England. They were expressly made payable in London, both as to principal and interest. Default was made in the payment of the interest coupons. Upon foreclosure brought, a controversy arose as to whether or not the bonds, after default in the coupons, would bear interest at seven per cent under the law of South Carolina or at five per cent, the rate in force in England. The United States Supreme Court held that the bonds were to be looked upon as English bonds and were to be governed by English

law, although they had been signed in South Carolina and had been forwarded to England. The pivotal point was that by their terms they were made payable in England. The Court said:

> "A contract therefor was one which, in all of its parts, was to be performed in England. Nevertheless it is contended that the principal sum agreed to be paid should bear interest at the rate of seven per cent fixed by the laws of South Carolina. *The only basis for this contention is the fact that the bonds purport to have been made in that state, but that fact is not conclusive.* * * * They were to be paid in pounds sterling at a designated house in London. The fair inference is that the Railroad Company *negotiated the bonds abroad and made them payable in that City in order to facilitate a sale of them to foreign buyers.*" (Italics added.)

The Rule that the Place of Physically Signing is Not the Place Where the Contract is Made.

Barrett *vs.* Dodge, 27 A. S. R. 779:

The Supreme Court of Rhode Island in this case used the following pertinent language:

> "The authorities agree that if no particular place of payment is specified in the note, or if, in other words, it is payable generally, the law of the place where it is made determines not only its construction but also the obligation and duty it imposes on the maker. * * * *But, by the place where the note is made is not meant the place where it is written, signed, and dated, but the place where it is delivered, delivery being essential to its consummation as an obligation.*" (Italics added.)

This is a case in which the note was signed in one state and transmitted by mail to another.

Delivery and Acceptance Govern—General Rule.

3 R. C. L., page 859:

> "It is an essential ingredient in every written contract that it be delivered by the party obligating himself, to some one who has a right to control it; the delivery, being the evidence of the assent of the promisor, and the reception by the promisee, consummates the contract. And so as a general rule, a negotiable promissory note, like any other written instrument, has no legal inception or valid existence as such until it has been delivered in accordance with the purpose and intention of the parties. And an actual or constructive delivery, *being the final act in the execution of a note*, is as essential to impart validity to the paper as is the signature of the maker. *Until that is done, it is a nullity.*" (Italics added.)

Acceptance by Payee Necessary to Complete Delivery.

8 *Corpus Juris*, Section 240:

> "To complete a delivery and make it effective the bill or note must be accepted by the payee or by some one acting for him."

Effect of Delivery by Mail.

Phipps *vs.* Harding, 70 Fed. 468:

In this case a note was written and executed in Wisconsin and sent in the United States mail to the payee in Massachusetts, and the question of the law of which one of these states governed it, became vital. With

these facts before it, the Circuit Court of Appeals said:

> "If delivered at a place other than at the place of execution, the law of the place where delivered controls. Daniel Neg. Inst. Sections 868-899. Slacum *vs.* Pomeroy, 6 Cranch, 221; Musson *vs.* Lake, 4 How. 262."
>
> Note to Ann. Cases, 1915-D.

The Editor treats this question quite fully, and from his work we quote somewhat copiously:

> "A bill or note drawn and signed in one jurisdiction but mailed from there to the payee in another jurisdiction is deemed to *be executed* where it is so *mailed if the delivery to the post office consummates the contract between the maker and the payee.* If, however, the bill or note *is not binding on its obligors from the time of mailing, its efficacy being contingent on its acceptance by the payee, then the bill or note is executed where it is received and accepted by the payee.* McGarry *v.* Nicklin, 110 Ala. 559, 17 So. 726, 55 Am. St. Rep. 40; Navajo County Bank *v.* Dolson, 163 Cal. 485, 126 Pac. 153, 41 L. R. A. (N. S.) 787; Nashua Sav. Bank *v.* Sayles, 184 Mass. 520, 69 N. E. 309, 100 Am. St. Rep. 573. * * *
>
> "Applying the rule heretofore stated it has been held in a number of instances that an instrument sent by mail into another jurisdiction *is executed where it is received by the payee,* the transaction being consummated by such receipt." (Citing eighteen representative decisions. Italics added.)

Cherry *vs.* Sprague, 105 A. S. R. 381:

In the statement of facts at page 382, it appears—"It was admitted that all of the signatures to the in-

strument were placed thereon in Massachusetts and it was mailed from that place to the plaintiff in South Dakota." The Court ruled:

> "As the instrument was a promissory note and *as it was payable in South Dakota and was sent to the payee by mail and received by him in that state it was a South Dakota and not a Massachusetts contract:* Nashua Sav. Bank *v.* Sayles, 184 Mass. 520, 522, 100 Am. St. Rep. 573, 69 N. E. 309, and cases cited; Callender, McAuslan & Troup Co. *v.* Flint, 187 Mass. 104, 72 N. E. 345." (Italics added.)

First National Bank *vs.* Shaw, 97 A. S. R. 840:

The facts are stated as follows:

> "The note sued on was received by the Bank of Geneva, Ohio, through the mail from Chattanooga, Tennessee."

The Court ruled:

> "Says Mr. Tiedeman, in his work on Commercial Paper, page 506: 'It is not the law of the place where the contract *was signed or executed,* but the law of the place *where the contract was consummated,* by delivery or otherwise, which governs the construction of the contract made in one state, to be performed in another. Thus, notes drawn in one state, and delivered and payable in another, for purchases made there, are governed by the law of the latter state, *and are considered there made; for by delivery, only the act of making is fully consummated.*'" (Italics added.)

Bell *vs.* Packard, 31 A. S. R. 252:

In this case a note was signed in Cambridge, Massachusetts and sent by mail to the payee in Skowhegan, Maine. The Court ruled:

"Our opinion is that the note was made and intended by the parties to be paid in Skowhegan. For although it was signed in Cambridge, it was delivered to the payee in Skowhegan; *and it was not a completed contract until delivered.* This proposition needs no citation of authorities, still we cite Lawrence *v.* Bassett, 5 Allen, 140, as precisely in point."

As to the fact that a line of credit had been arranged in New York prior to the mailing of any of the notes to New York, of an indefinite amount beyond which the notes could never go, attention is called to the fact that in the decision of this Court in Boyce *vs.* Edwards, 4 Peters 22, it is held that such a general arrangement cannot be looked upon as a specific acceptance of the various notes later delivered. In addition to that the agreed statement of facts specifically states that "each specific loan to be made thereafter being subject to acceptance by the specific bank from which it was sought."

From the foregoing, we submit that as the notes in question were arranged for in New York, were made payable in New York, were mailed from South Carolina to New York with the full understanding as is stated in the agreed statement of facts that they were revocable until they were actually received by the bank in New York and actually cashed, and especially as they were specifically subject to final acceptance or refusal by the bank after they reached New York, that as a matter of law they are to be considered as being notes and contracts made in New York and under the laws of New York.

Respectfully submitted,

P. F. HENDERSON,
HENDERSONS & SALLEY,
Appellant's Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, MEMBERS OF AND COMPOSING SOUTH CAROLINA TAX COMMISSION, RESPONDENTS.

REPLY ARGUMENT FOR APPELLANT.

P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Appellant.

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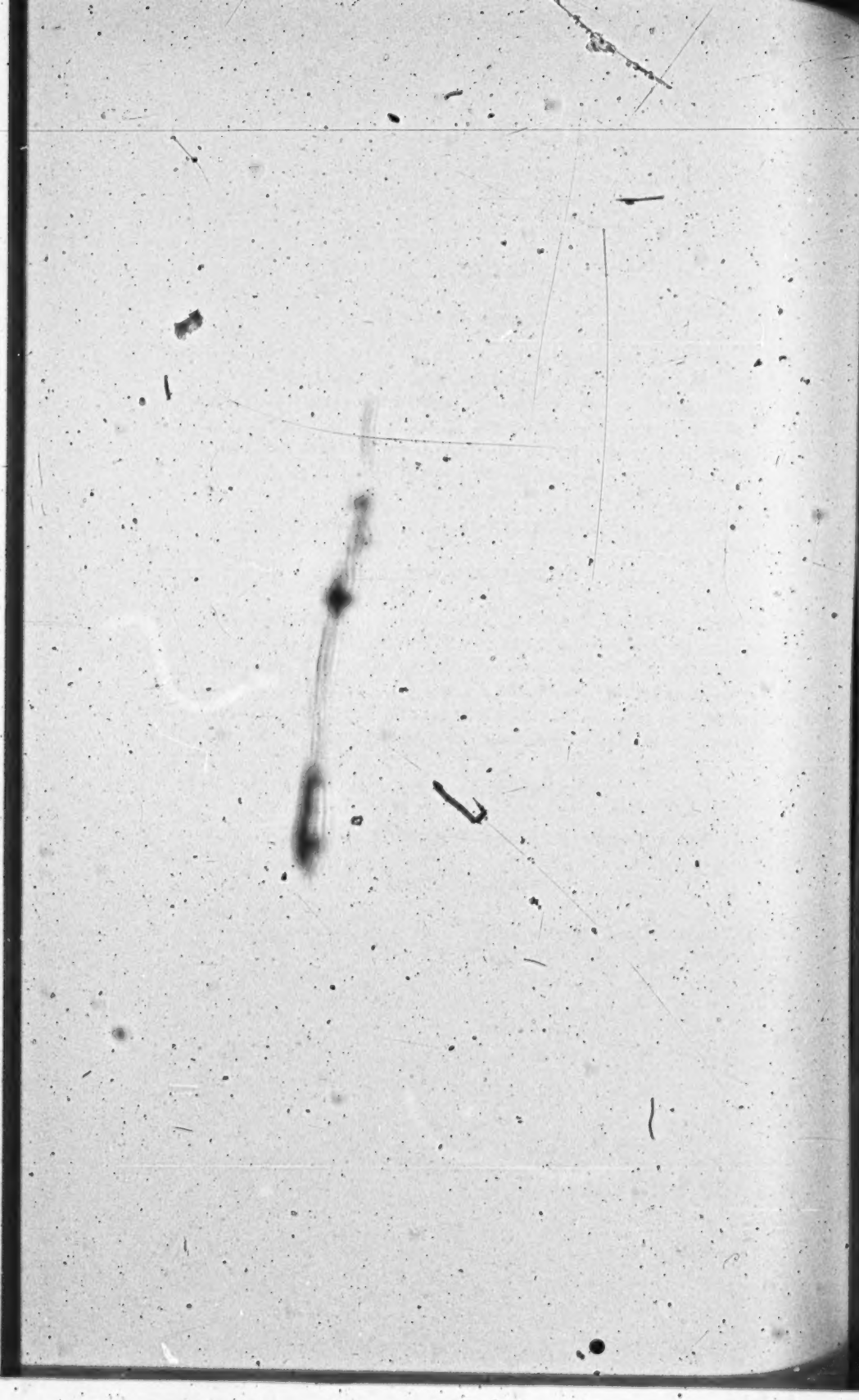

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REPLY ARGUMENT FOR APPELLANT.

Replying to appellees' argument and to the editorial note as to this case appearing in the *Harvard Law Review*, which is appended to appellees' argument, we ask to observe:

(1) The New Rule Recently Established as to the Taxation of Intangibles is not Confined to Inheritance Taxation.

Both appellees' counsel and the editor of the *Harvard Law Review* assume that the recently established

rule as to the taxation of intangibles is confined to inheritance or succession taxation alone. This new rule is to the general effect, as stated in the decision of this Court in the Minnesota case (Farmers Loan & Trust Company *vs.* Minnesota, 280 U. S. 204), that "*intangibles may be properly taxed at the domicile of their owner*" and not in any other State. As we have set out at page six of our argument in chief, there are five recent decisions upon this subject. Four of them are succession or inheritance-tax cases, but the fifth of these decisions, Safe Deposit and Trust Company *vs.* Virginia, 280 U. S. 83, was not an inheritance-tax case, but dealt with a distinctly different field of taxation, namely, *property taxation.* In it, this Court allowed the taxation of intangibles only at the domicile of their legal owner, applying, in doing so, the general principle involved.

At pages 12-13 of our argument in chief, we have pointed out that the whole field of taxation is divided into three parts: (1) property taxation, (2) capitation taxation, and (3) excise taxation. Inheritance taxation is but a subdivision of excise taxation. Hence it would seem that when this Court has applied the principle of the new rule as to the taxation of intangibles, namely, that they may be taxed and that they have a taxable *situs* alone at the domicile of their owner, to so widely separated subjects of taxation as inheritance taxation and property taxation, it would seem that the intention of this Court certainly is that the new rule is to cover the whole field of taxation. Docu-

mentary-stamp taxation is but another subdivision of excise taxation.

We further submit that there can be no logical reason for confining the new rule of the taxation of intangibles to inheritance taxation alone. The *raison d'etre* of the new rule was, as this Court expressed it, *the protection of negotiable securities from oppressive taxation.* To forbid such multiple taxation in the field of inheritance taxation and to allow it by another name, in another field of taxation (for example, the possibility of two State documentary-stamp taxes), would be, we submit, to stop far short of the objective intended by this Court.

(2) The Tax in Question is not a Tax on the "Facilities Used."

Appellees' counsel seeks to justify the tax in question under the case of Nicol *vs.* Ames, 173 U. S. 509-519, by stating that it is a tax upon the facilities used in the execution of the notes in question, the idea being that because the President of the plaintiff corporation used a pen and a desk and a blotter in South Carolina that the tax is legal. Even were his contention as to the nature of the tax correct, the fundamental principle against multiple taxation, etc., involved in this case would remain, but, as counsel's argument is practically confined to the idea that the thing taxed is the facilities used in the signing of the notes in South Carolina, we ask to call the following consideration to the Court's attention.

Counsel overlooks the fact that in the excerpt quoted by him from the decision of this Court in Nicol *vs.* Ames, two taxes are plainly referred to. One of these taxes was a tax upon the complicated facilities used in the great Chicago Stock Exchange, and the other, which was described as the tax *"laid in the same act upon a broker's note,"* was denominated not as a tax upon the facilities used, but as *"a tax on the note or memorandum itself."*

It will be found that the South Carolina Documentary Stamp Tax Act in its main clause is copied verbatim from the Emergency War Expenditures Act passed by Congress on June 13, 1898. See United States Statutes at Large, Volume 30, page 448. The language enacting a documentary stamp tax is found at page 451. Schedule *A* of the Act of Congress is found at page 458. In two separate paragraphs, Schedule *A* levies the two separate taxes referred to in Nicol *vs.* Ames. In the margin of the report referred to in appellees' argument, *the second paragraph alone of Schedule A is set out.* Said paragraph set out in the margin at page 513 of 173 U. S. Reports is a tax upon sales made "at any exchange or board of trade," and in the proviso requires that each sale be reduced to a memorandum, evidently for the purpose of permitting it to be taxed by affixing a stamp thereto. This Court held in the decision in question that that tax was a tax upon the facilities used and not upon the memorandum itself. The tax levied in the paragraph in question is, however, not the one that we are dealing with in the instant case.

In the first paragraph of Schedule *A* (which is

omitted from the margin of 173 U. S., p. 513) another stamp tax is levied upon "bonds, debentures or certificates of indebtedness * * * agreements to sell, or memoranda of sales or deliveries or transfers of shares." In the penalty clause "brokers" are referred to. In the decision of the Court, at page 519, the Court points out that in addition to the tax upon facilities set out in the second paragraph of Schedule *A*, that there is another tax laid "upon brokers' notes or memorandum of sale as a separate tax." The Court holds that this tax on brokers' notes or memorandum of sale "is a tax on the note or memorandum itself."

Hence the situation that we have is that the tax involved in the instant case, levied under the South Carolina Documentary Stamp Act, which is identical with that levied in the first paragraph of Schedule *A* of the War Emergency Act of 1898, is a tax levied directly upon bonds, debentures, certificates of indebtedness, including notes, *and is not, as counsel has argued it, a tax upon facilities used in the creation of said notes.* The statutory court herein ruled against appellees' counsel upon this point, holding specifically that the tax in question (R. 33) is *"levied directly on the documents themselves"*; and, at R. 37, "the tax is laid upon the documents themselves."

Hence we submit that undoubtedly Nicol *vs.* Ames is not authority for the idea that the "facilities used" by the President of the appellant company in signing the notes, such as a pen, a desk, and a blotter, may for their use be taxed the sum of more than five

thousand dollars; but that the Nicol decision establishes the fact to the contrary that the tax is laid directly upon the notes as a species of excise tax known as a documentary tax, and that the vital and pivotal question is that of where the taxable *situs* of said notes exists and where such pieces of paper actually became notes; and we submit that the answer to that question is that said notes have a taxable *situs* under the new rule as to the taxation of intangibles only at the domicile of their owners in New York, Boston, and Augusta, Georgia, and that the pieces of paper involved actually became notes only when they were actually received and accepted as notes in New York, Boston, and Augusta.

Appellees' counsel in arguing this case has been in the habit of simply stating that the tax in question is an excise tax and of inferring that therefore South Carolina may maintain its legality. We learn, however, from Section 1673 of Cooley on Taxation that excise taxation is a generic term, and that excise taxation falls into many specific subdivisions, such as (1) license taxation, (2) franchise taxation, (3) sales taxation, (4) inheritance taxation, (5) documentary-stamp taxation, and so on. This Court has banned the double or multiple taxation of intangibles in that subdivision of excise taxation known as inheritance taxation and has confined the taxable *situs* to the domicile of the owner of the intangibles. Our effort herein is simply to apply the same wise principle to that other subdivision of excise taxation known as documentary-stamp taxation.

(3) Authorities Relied on in Harvard Law Review not Controlling of or Applicable to Present Case.

The article referred to relies upon the decisions of this Court in Palmetto Fire Insurance Company *vs.* Connecticut, 272 U. S. 295, and in Compania De Tobacos *vs.* Collector, 275 U. S. 87, as establishing the fact that "the whole course of decisions in excise-tax cases permit multiple taxation of activities which transcend State lines."

In so far as the implication is that therefore a negotiable instrument may now and since the promulgation of the new rule announced in the Minnesota case against multiple taxation of intangibles be subjected to double taxation, we reply that the decisions referred to are not now authorities to such effect, for

(*a*) The Palmetto Fire Insurance case was based on the old rule enunciated in Blackstone *vs.* Miller, 188 U. S. 189, namely, that the State imposing the double taxation lent the protection of its laws to the transaction, and hence was entitled to even multiple taxation therefor. With the abrogation of this rule all multiple taxation decisions based thereon have ceased to be controlling, we submit; and,

(*b*) Both decisions are as to license taxation and deal solely with the right to impose license taxation upon business done in the State imposing the tax, although part of the business done may have been accomplished in another State.

In the instant case the tax imposed is specifically not a license tax. If it were, we would and do con-

tend that multiple taxation of negotiable paper is not now allowable; but until South Carolina passes an act *taxing the business of signing notes* the effect of decisions as to license taxation is not pertinent or controlling.

Respectfully submitted,

P. F. HENDERSON,
HENDERSONS & SALLEY,
Appellant's Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1930

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
Appellant,

against

W. G. QUERY, J. P. DERHAM, and F. C. ROBINSON,
Personally and as Members of South Carolina Tax Commission, Respondents

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ARGUMENT FOR RESPONDENTS

JOHN M. DANIEL, Atforney General,
J. FRASER LYON,
Counsel for Respondents.

THE R. L. BRYAN CO., COLUMBIA, S. C.
4-21-31-50

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Counsel for Respondents.

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STATEMENT

Graniteville Manufacturing Company is a corporation organized and existing under the laws of the State of South Carolina. It has its only office and place of business in Graniteville, South Carolina. At various times the officers of this corporation "made," "signed," "consigned," "shipped" certain promissory notes. All of these notes were sent by mail from Graniteville, South Carolina, to bankers outside the State either to Augusta, Georgia, Boston, Massachusetts, or New York City, New York. Money was borrowed on these several notes and the amount placed to the credit of plaintiff in the lending bank. When the notes were paid they were returned to Graniteville Manufacturing Company in South Carolina.

An Act of the South Carolina Legislature provides:

> "Section 1. That on and after the passage of this Act, there shall be levied, collected and paid, for and in respect of the several bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instrument, matter or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns or ships the same or for whose benefit or use the same are made, signed, issued, sold, removed, consigned or shipped, the several taxes specified in such schedule."

"SCHEDULE A

> "4. Notes, Written Obligations to Pay Money.—Promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed; non-negotiable notes; written obligations to pay money, except as may herein otherwise be provided for; assignment of salaries, wages or other compensation; and for each renewal of

same for a sum not exceeding One Hundred ($100.00) Dollars, four (4) cents; and for each additional One Hundred ($100.00) Dollars, or fractional part thereof, four (4) cents.

"Mortgage which incorporate the certificate of indebtedness not otherwise shown in separate instrument are subject to a tax at the same rate."

Acts of S. C., 1928, pages 1090, 1094.

South Carolina Tax Commission has construed this Act of the Legislature and so administered it as imposing a tax on account of the paper upon which the note is written or printed and upon the execution, signing and issuing thereof in this State. If a note is signed or executed in another State and sent into South Carolina for discount or otherwise, no tax is claimed, as in such case no facility is used in South Carolina for the creation of such document. This law as administered in South Carolina is a tax upon a facility used in this State by this domestic corporation.

As held by the District Court this is an excise tax.

The South Carolina Act is substantially and in effect the same as the Act of Congress levying an excise tax on certain documents. The Act of Congress is set forth on the margin in the case of *Nicol v. Ames*, 19 Sup. Ct. Rep., 522; 173 U. S., 509.

In the above cited case this Court construing that Act of Congress said:

"It is not a tax upon the business itself which is so transacted, but it is a duty upon the facilities made use of, and actually employed, in the transaction of the business, and separate and apart from the business itself. It is not a tax upon the members of the exchange, nor upon membership therein, nor is it a tax upon sales generally. The Act limits the tax to sales at any exchange, or board of trade, or other similar place; and its fair meaning is to impose a duty upon those privileges, or facilities which are there found and made use of in the sale at such place

of any product or merchandise. Whether this facility or privilege is such a thing as can be legally taxed, while leaving untaxed all other sales made outside of such places, will be discussed further on. At present it is enough to say that the tax is not upon the property sold, and cannot on that ground be found to be direct. The tax laid in the same Act upon a broker's note or memorandum of sale is a separate tax, although it may have reference to the same transaction. It is a tax on the note or memorandum itself, where made by a broker, while in the other case tax, although measured in amount by a reference to the value of the thing sold, is in reality upon the privilege or facility used in the transaction or sale. The tax is not a direct tax, within the meaning of the constitution, but is, as already stated, in the nature of a duty or an excise. The amount of such a tax, when imposed in a case like this, may be increased or diminished by the extent to which the privilege or facility is used, and it is measured in this act by the value of the property transferred by means of using such privilege or facility; but this does not make the tax a direct one."

Nicol v. Ames, 19 Sup. Ct. Rep., 526, 527, 173 U. S., 509.

Respondents rely upon the very clear reasoning of the District Court in the order herein appealed from both as to the nature of the tax and as to the inapplicability of the decisions of this Court in the several succession or inheritance tax cases cited by appellant. By reason of recent decisions in inheritance or succession tax cases, it is now the law that the succession to intangibles is taxable only at the domicile of the owner as the succession takes place there. There is no succession in this case. The facility which appellant uses and which, under the laws of South Carolina, it is empowered to use, is exercised wholly within South Carolina, *i. e.,* the paper upon which the note is written and the signing and issuing thereof.

We take the liberty of calling to the attention of the Court an article appearing in the Harvard Law Review of March,

1931, and for the convenience of the Court a copy thereof is set forth in the appendix hereto.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General.

J. FRASER LYON,
Respondents' Attorney.

APPENDIX

"Taxation—Where Property May Be Taxed: Choses in Action—Stamp Tax on Promissory Notes.—In connection with the conduct of its manufacturing business in South Carolina, a local corporation established credits with banks outside the state. Whenever a loan was desired, a note signed by its officers was sent by mail to a bank, always subject, however, to revocation until accepted there. All these notes were made payable at the banking houses. Some were issued and mailed from the corporation's office in Georgia; others were made and mailed in South Carolina. The South Carolina law requires the payment of a stamp tax by any person who issues, makes, or signs a promissory note, or by any person for whose benefit such a note is issued, made, or signed. 35 S. C. Stat., 1089 (1928). The corporation brought suit in a federal district court to enjoin the tax commissioner's threatened levy of execution on its property for failure to pay stamp taxes upon the notes issued. **Held,** that the notes wholly formed outside the state are beyond its taxing power, but that the State may tax the notes which were made and mailed within its borders, even though the contract was not completed there. Injunction granted in part and refused in part. *Graniteville Mfg. Co. v. Query,* 44 F. (2d), 64 (E. D. S. C., 1930).

"The constitutional restrictions with which the Supreme Court has largely concerned itself in cases dealing

with taxes upon activities have been those of jurisdiction and classification rather than the nature of the activities taxed. *Cf. Louisville Gas & Elec. Co. v. Coleman*, 277 U. S., 32 (1928); *Compania De Tabacos v. Collector*, 275 U. C., 87 (1927); *Hatch v. Reardon*, 204 U. S., 152 (1907) *Allgeyer v. Louisiana*, 165 U. S., 578 (1897). Domicile of the actor does not give a state jurisdiction to levy an excise tax upon transactions which are extra-territorial. *Allgeyer v. Louisiana, supra.* Nor does a state acquire jurisdiction by the fact that a transaction is effectuated for the benefit of a business which is carred on within its borders. *St. Louis Cotton Compress Co. v. Arkansas*, 260 U. S., 346 (1922); *Compania De Tabacos v. Collector, supra.* The notes made and issued outside the state are therefore beyond the state's taxing power. But as to the notes made in South Carolina, all of the acts of the corporation, subsequent to the credit arrangement, which produced the contract were done within the state. And no constitutional limitation requires that the levy of excises on contractual transactions be confined to the state in which the contract is completed. *Cf. Palmetto Fire Ins. Co. v. Conn.*, 272 U. S., 295 (1926); *Compania De Tabacos v. Collector, supra;* see 4 Cooley, Taxation (4th Ed., 1924), Sec. 1679. Counsel relied upon recent cases invalidating statutes which impose an inheritance tax upon estates in respect to debts owed to non-resident decedents by persons domiciled within the state. *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S., 204 (1930); *Cf. Baldwin v. Missouri*, 281 U. S., 586 (1930); see Note (1930), 43 Harv. L. Rev., 792. But in these cases the testamentary transfer, unlike the issuance of the notes in the instant case, was effected entirely outside the taxing state. And while the *raison d'etre* of the inheritance tax holdings is the desire to avoid double taxation, the whole course of decisions in excise tax cases permits multiple taxation of activities which transcend state lines. *Compania De Tabacos v. Collector, supra; Palmetto Ins. Co. v. Conn., supra;* see *Farmers Loan & Trust Co. v. Minnesota, supra,*

at 213 (specific exception of intangibles which have acquired a business *situs*); *Cf. Powell, The Business Situs of Credits* (1922), 28 W. Va. L. Q., 89."

Harvard Law Review, March, 1931, page 869.

SUPREME COURT OF THE UNITED STATES.

No. 596—October Term, 1930.

Graniteville Manufacturing Company, *vs.* W. G. Query, J. P. Derham and F. C. Robinson, personally and as members of the South Carolina Tax Commission.	Appeal from the District Court of the United States for the Eastern District of South Carolina.

[May 18, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Graniteville Manufacturing Company, a corporation of South Carolina, brought this suit in the District Court of the United States to restrain the collection of certain stamp taxes imposed upon its promissory notes under Act 574, p. 1089, of the Acts of 1928 of that State.[1] A motion for an interlocutory in-

[1]The statute is as follows: "Section 1. That on and after the passage of this Act, there shall be levied, collected and paid, for and in respect of the several bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instrument, matter or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns or ships the same or for whose benefit or use the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule.

"Schedule A.

"4. Promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed; non-negotiable notes; written obligations to pay money, except as may herein otherwise be provided for; assignment of salaries, wages or other compensation; and for each renewal of same, for a sum not exceeding One Hundred ($100.00) Dollars, four (4) cents; and for each additional One Hundred ($100.00) Dollars, or fractional part thereof, four (4) cents."

junction was heard by three judges, as required by section 266 of the Judicial Code (U. S. C., Tit. 28, sec. 380). Holding that the plaintiff had no adequate remedy at law, the court granted an injunction with respect to notes made outside the State but denied relief as to notes which were signed within the State. 44 Fed. (2d) 64.

There is no controversy as to the facts, which were stipulated and found by the court substantially as follows:

"These notes were executed at various times from July 24, 1923, to March 12, 1930. The notes were all payable to banks, at their banking houses, respectively, outside of South Carolina, none of them being located or doing any business within that State. The custom and practice between the plaintiff and each of the banks was that in each instance, at the office of the bank, a line of credit was first established; that is, an agreement was made that the plaintiff's borrowing from the bank should never exceed a certain amount, each specific loan to be made thereafter being subject to acceptance by the bank. When a loan was desired, the bank having been notified that a loan would be desired at a certain date and an inquiry having been made of it as to the then existing discount rate, the note would be signed by the president or other executive officer of the plaintiff, and forwarded to the bank by mail. The note was subject to withdrawal and revocation by the plaintiff until it was actually received and accepted by the bank and the proceeds actually placed to the credit of the plaintiff in the bank. . . . Payment of the note was made to the bank at its banking house by the plaintiff sending checks from its office at Graniteville upon other banks; and when the note was paid, it was marked paid, or canceled, and returned to the plaintiff at Graniteville, S. C., and there kept.

. . . . . .

"The foregoing facts apply to all of the notes; but with reference to the place where the notes were signed, they may be divided into two classes. Prior to December 1, 1924, the plaintiff's executive officers resided in Augusta, Ga., and all of its notes, up to that time, were signed by its executive officers in Augusta, Ga., and mailed from there to banks outside of South Carolina, and those notes were never in the State of South Carolina until after they were paid and returned to the plaintiff at its office at Graniteville, S. C. But after December 1, 1924, plaintiff's executive officers resided at Graniteville, S. C., and the notes executed subsequent to that time were signed by those officers at Graniteville, S. C., placed in the mail there for delivery to the bank outside of South Carolina, and upon payment, were later returned to the plaintiff at Graniteville, S. C."

It is only as to the latter class of notes which were signed in South Carolina that the District Court upheld the tax. The tax as thus sustained is an excise tax, of a familiar sort, levied with respect to the creation of instruments within the State. So laid, the tax was not imposed upon property, or upon the transfer of property, situated beyond the jurisdiction of the State as was found to be the case in *Union Refrigerator Transit Company* v. *Kentucky*, 199 U. S. 194; *Frick* v. *Pennsylvania*, 268 U. S. 473; *Farmers Loan & Trust Company* v. *Minnesota*, 280 U. S. 204; *Baldwin* v. *Missouri*, 281 U. S. 586; *Beidler* v. *South Carolina Tax Commission*, 282 U. S. 1. It is simply a tax levied in relation to an act done within the State in making an instrument. *New York ex. rel. Hatch* v. *Reardon*, 204 U. S. 152; *Brodnax* v. *Missouri*, 219 U. S. 285. See, also, *Nicol* v. *Ames*, 173 U. S. 509, 519. We see no reason to doubt the validity of the tax as thus enforced.

Order affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.